

Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 14, 2006

TO: Persons on the attached mailing list.

RE: McCarty Road Landfill TX, LP
MSW Permit No. 261B

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the Harris County Public Library, North Channel Branch, 15741 Wallisville Road, Houston, Texas 77049.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
 - (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be in writing and must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter: You should submit your request to the following address:

LaDonna Castañuela, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

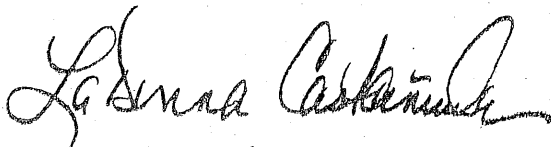
Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,



LaDonna Castañuela
Chief Clerk

LDC/da

Enclosures

McCarty Road Landfill TX, LP
TCEQ MSW Permit No. 261B

FOR THE APPLICANT:

Jim Stipe, General Manager
McCarty Road Landfill TX, LP
5757A Oates Road
Houston, Texas 77078-4811

Jeffrey P. Young, P.E.
Weaver Boos Consultants, LLC-Southwest
6420 Southwest Boulevard, Suite 206
Fort Worth, Texas 76109

FOR THE EXECUTIVE DIRECTOR:

Les Trobman, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

Johnny Williamson, Technical Staff
Texas Commission on Environmental Quality
Waste Permits Division MC-124
P.O. Box 13087
Austin, Texas 78711-3087

FOR OFFICE OF PUBLIC ASSISTANCE:

Jodena Henneke, Director
Texas Commission on Environmental Quality
Office of Public Assistance MC-108
P.O. Box 13087
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL:

Blas J. Coy, Jr., Attorney
Texas Commission on Environmental Quality
Public Interest Counsel MC-103
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK:

LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087

INTERESTED PERSONS:

See attached list.

FLORA M ADAMS
10114 CHEEVES DR
HOUSTON TX 77016-3830

DELIA ARCE
9205 MONTERREY ST
HOUSTON TX 77078-3420

D BARNES
7012 BANYA N
HOUSTON TX 77028

AMELYM & RONALLO AFANODOR
8140 E HOUSTON RD
HOUSTON TX 77028-2023

EFFIE & ELLIS J ARCENEUX
6218 RIETTA ST
HOUSTON TX 77016-4338

MARY BARNES
6719 GREY OAKS DR
HOUSTON TX 77050-3811

MS REINA AGULIAR
8140 E HOUSTON RD
HOUSTON TX 77028-2023

W E ARTHUR
465 BARRACUDA PL
CORPUS CHRISTI TX 78411-1521

NICOLE R BATES CHIEF OF STAFF
STATE REP HAROLD V DUTTON JR
8799 NORTH LOOP E STE 305
HOUSTON TX 77029-1242

ANA ALANIS
7848 LOCKSLEY RD
HOUSTON TX 77078-2111

AMBRA D ASBERRY
6815 SARELY OAKS
HOUSTON TX 77228

RHONDA BATTLE
9109 LAZYDALE LN
HOUSTON TX 77078-3339

JULIO ALBINO
9239 LAKE FOREST BLVD
HOUSTON TX 77078-3400

MRS DEBRA ASBERRY
6815 SANDY OAKS DR
HOUSTON TX 77050-3841

RUTHIE M BELL
6718 GREY OAKS DR
HOUSTON TX 77050-3812

DEBBIE ALLEN
PLEASANTVILLE SUPER NEIGHBORHOOD
1514 PLEASANTVILLE DR
HOUSTON TX 77029-3210

MAURICE ASBERRY
6815 SANDY OAKS DR
HOUSTON TX 77050-3841

WESLEY BENARD
10618 CASTLETON ST
HOUSTON TX 77016-2602

MANAF ALVARADO
8950 RAILWOOD DR
HOUSTON TX 77078-4516

ODELL ASBERRY
7716 HOFFMAN ST
HOUSTON TX 77016-6522

KENNETH BENJAMIN
9329 FOREST VIEW ST
HOUSTON TX 77078-3407

WILMA R AMAYA
9118 LAKE FOREST BLVD
HOUSTON TX 77078-3333

PATRICIA S AVALOS
5710 GUADALUPE ST
HOUSTON TX 77016-1724

LOUISE BLACK
11103 HEATH CT
HOUSTON TX 77016-2321

CARDADIA ANDERSON
4726 PARKER RD
HOUSTON TX 77093-5925

KAREN BAJOT
6718 STANDING OAKS ST
HOUSTON TX 77050-3836

TOMMY R BLACK
11103 HEATH CT
HOUSTON TX 77016-2321

COLEY ANDREA
9735 FARRAGUT ST
HOUSTON TX 77078-2105

PEARL BALDWIN
12819 CRYSTAL COVE DR
HOUSTON TX 77044-1516

MS BRENDA BOLDEN
6718 LAKEMONT DR
HOUSTON TX 77050-2804

MARALANA BOSSETT
8013 WILEYVALE RD
HOUSTON TX 77016-6441

EMMA CALDWELL
5610 BRIARWICK LN
HOUSTON TX 77016-2605

MINNIE CLARK
8813 KENTSHIRE DR
HOUSTON TX 77078-2421

ELIZABETH BRIGHT
7490 BEECHNUT ST APT 324
HOUSTON TX 77074-4527

ROY F CANDLESS
9338 RICHLAND DR
HOUSTON TX 77078-4120

LOUPHAS CLOPHERS
8218 CLEIBCORE
HOUSTON TX 77078

VANESSA BROOKS
7507 STAMEN DR
HOUSTON TX 77041-1537

WANDA CARPENTER
8535 GREEN RIVER DR
HOUSTON TX 77028-2834

ALBERT E COLEMAN
7529 SUNDOWN DR
HOUSTON TX 77028-1325

MARILYN BROWN
924 FUGATE ST
HOUSTON TX 77009-5012

MARIA CARRILLO
8917 LAKE FOREST BLVD
HOUSTON TX 77078-3328

A COLLINS
9133 LAKE FOREST BLVD
HOUSTON TX 77078-3332

SANDRA BRUSIE
8418 WOODLYN RD
HOUSTON TX 77028-1536

MARTINA CARTWRIGHT
3100 CLEBURNE ST
HOUSTON TX 77004-4501

MARY COLLINS
9133 LAKE FOREST BLVD
HOUSTON TX 77078-3332

JESIA BRYANT
11414 WALNUT MEADOW DR
HOUSTON TX 77066-3961

MARTINA E CARTWRIGHT
ENVIRONMENTAL JUSTICE CLINIC
STE 400
12012 WICKCHESTER LN
HOUSTON TX 77079-1229

CONCERNED CITIZEN
9214 MONTERREY ST
HOUSTON TX 77078-3421

BUCK BUCHANAN
CITY OF HOUSTON
611 WALKER ST STE 1200
HOUSTON TX 77002-4903

DIANA CASTENO
8430 FLINTRIDGE DR
HOUSTON TX 77028-2722

CONCERNED CITIZEN
7923 STERLINGSHIRE ST
HOUSTON TX 77078-2125

EVELIA BUCIO
8910 LAKE FOREST BLVD
HOUSTON TX 77078-3329

EARNESTINE CHAMPINE
10615 KNIGHTWOOD CT
HOUSTON TX 77016-2638

CONCERNED CITIZEN
7902 CLAIBORNE ST
HOUSTON TX 77078-2104

VICTOR BUCIO
8910 LAKE FOREST BLVD
HOUSTON TX 77078-3329

T CHASE
PO BOX 11935
HOUSTON TX 77293-1935

CONCERNED CITIZEN
9230 CADDOR RD
HOUSTON TX 77078-2510

RENEE CAGE
9905 REBEL RD
HOUSTON TX 77016-3934

JOHN L CLARK
8813 KENTSHIRE DR
HOUSTON TX 77078-2421

CONCERNED CITIZEN
6711 LAKEMONT DR
HOUSTON TX 77050-2803

CONCERNED CITIZEN
9518 HOUSTON
HOUSTON TX 77016

CONCERNED CITIZEN
9006 SULTAN DR
HOUSTON TX 77078-3836

LAWRENCE CRANFORD
9102 LAKE FOREST BLVD
HOUSTON TX 77078-3333

CONCERNED CITIZEN
6722 MOSS OAKS DR
HOUSTON TX 77050-3820

CONCERNED CITIZEN
8208 KELLETT ST
HOUSTON TX 77028-1518

DONEST CRISWELL JR
5222 YORKWOOD ST
HOUSTON TX 77016-2640

CONCERNED CITIZEN
9230 TAITON ST
HOUSTON TX 77028

CONCERNED CITIZEN
9307 HADDICK ST
HOUSTON TX 77028-1221

MARY L CRISWELL
5222 YORKWOOD ST
HOUSTON TX 77016-2640

CONCERNED CITIZEN
7409 BRETSHIRE DR
HOUSTON TX 77016-3811

ANDREA COOKSEY
6711 LAKEMONT DR
HOUSTON TX 77050-2803

DONTE CURTIS
9518 BALSAM LN
HOUSTON TX 77078-3102

CONCERNED CITIZEN
2943 BLUE SKY ST
HOUSTON TX 77088-4503

CLARK COOPER JR
9113 LAKE FOREST BLVD
HOUSTON TX 77078-3332

ROBIN GERMAN CURTIS
7220 HOMESTEAD RD
HOUSTON TX 77028-3848

CONCERNED CITIZEN
5706 BRIARWICK LN
HOUSTON TX 77016-2606

MS RUBY COOPER
8814 LINDA VISTA RD
HOUSTON TX 77078-4014

ALICIA DANIELS
9927 VALLEY MILL CT
HOUSTON TX 77078-3210

CONCERNED CITIZEN
8154 CRESTVIEW DR
HOUSTON TX 77028-2606

CHRIS CORNETT
1542 CHESTNUT TREE LN
HOUSTON TX 77067-3410

MONIKA DANIELS
9607 HANFORD ST
HOUSTON TX 77078-2116

CONCERNED CITIZEN
8140 E HOUSTON RD
HOUSTON TX 77028-2023

SCOTT L CORNETT
1415 GREENS PKWY APT 53
HOUSTON TX 77067-4016

MARIA DELGADO
9134 LAKE FOREST BLVD
HOUSTON TX 77078-3333

CONCERNED CITIZEN
7823 CAROLWOOD DR
HOUSTON TX 77028-2501

BERNICE & LAWRENCE CRANFORD
9102 LAKE FOREST BLVD
HOUSTON TX 77078-3333

DON DEMORE
7201 LANGLEY RD
HOUSTON TX 77016-2723

CONCERNED CITIZEN
12338 HAROLDSON LN
HOUSTON TX 77044

BERNICE J CRANFORD
9102 LAKE FOREST BLVD
HOUSTON TX 77078-3333

EVALA DEROUSEELE
9710 BERTWOOD ST
HOUSTON TX 77016-4322

JOE DICKENS
10618 ONSLOW ST
HOUSTON TX 77016-2646

BLANCA ESPINALES
8825 CHATWOOD DR
HOUSTON TX 77078-3801

WILLIAM H FORD
10607 BARNHAM ST
HOUSTON TX 77016-2625

LESLEY ANN DICKENS
10618 ONSLOW ST
HOUSTON TX 77016-2646

ELIEDORO FERNANDEZ
8140 E HOUSTON RD
HOUSTON TX 77028-2023

BETTY J FOREMAN
8522 RESIN ST
HOUSTON TX 77078

ELLA DICKSON
8634 FRINGEWOOD DR
HOUSTON TX 77028-1644

MARIA FERNANDEZ
8140 E HOUSTON RD
HOUSTON TX 77028-2023

ORLINDA FOWLER
9719 BEAN ST
HOUSTON TX 77078-2804

OSCAR P DIXON
8909 LAKE FOREST BLVD
HOUSTON TX 77078-3328

MARIA M FERNANDEZ
8140 E HOUSTON RD
HOUSTON TX 77028-2023

BERLONE FRANCIS
9626 BEAN ST
HOUSTON TX 77078-2803

DAN DOHERTY SR ASSISTANT CITY ATTORNEY
CITY OF HOUSTON
PO BOX 1562
HOUSTON TX 77251-1562

MIRNAL FERNANDEZ
8140 E HOUSTON RD
HOUSTON TX 77028-2023

ELVIN FRANKLIN
6711 MOSS OAKS DR
HOUSTON TX 77050-3819

CARLOS DOMINGUEZ
8905 LAS CRUCES CIR
HOUSTON TX 77078-3337

JOHN FEUTRAL
PLEASANTVILLE SUPER NEIGHBORHOOD
1514 PLEASANTVILLE DR
HOUSTON TX 77029-3210

THE HONORABLE MARIO GALLEGOS JR
TEXAS SENATE
PO BOX 12068
AUSTIN TX 78711-2068

MELVIN DOUCETT
9314 LAKE FOREST BLVD
HOUSTON TX 77078-3414

TOMMIE FIGURES
8818 FOREST HOLLOW ST
HOUSTON TX 77078-1806

ROBERT GALLEGOS
OFFICE OF COUNTY COMMISSIONER SYLVIA C
1001 SSGT MACARIO GARCIA DR
HOUSTON TX 77011-2507

JOYCLYN DOW
9819 CABALLERO DR
HOUSTON TX 77078-3146

MANUEL FLORES
9229 LAKE FOREST BLVD
HOUSTON TX 77078-3411

ADELIA GAONA
9241 FOREST VIEW ST
HOUSTON TX 77078-3405

LEE R DUNHAM
7621 LAKEWOOD DR
HOUSTON TX 77016-2814

SINDY FLORES
8906 LAS CRUCES CIR
HOUSTON TX 77078-3338

BOBBIE GAONA
9136 LAZYDALE LN
HOUSTON TX 77078-3340

MRS MATTIE EBOW
6222 RIETTA ST
HOUSTON TX 77016-4338

SUSANA FLORES
9229 LAKE FOREST BLVD
HOUSTON TX 77078-3411

JOHN GAONA
9136 LAZYDALE LN
HOUSTON TX 77078-3340

TINA GAONA
9136 LAZYDALE LN
HOUSTON TX 77078-3340

DONALD P GORITY JR
7131 PINE GROVE DR
HOUSTON TX 77092-1216

JOANNA GUAJARDO
8914 LAKE FOREST BLVD
HOUSTON TX 77078-3329

DELORES J GAPLE
10113 BLETTON
HOUSTON TX 77016

LINDA GOYNES
PO BOX 23202
HOUSTON TX 77228-3202

MARY GUIDRY
6322 ANNUNCIATION ST
HOUSTON TX 77016-1343

LARA GAREY
12630 BRONTTON CT
MONTGOMERY TX 77356-5465

ANGELA GRAY
9152 LAZYDALE LN
HOUSTON TX 77078-3340

MARITZA GUIFARO
9306 LAKE FOREST BLVD
HOUSTON TX 77078-3414

GARRON GARRETT
8535 GREEN RIVER DR
HOUSTON TX 77028-2834

JOE GRAY
9152 LAZYDALE LN
HOUSTON TX 77078-3340

MARITZA GUIFARRO
9306 LAKE FOREST BLVD
HOUSTON TX 77078-3414

FRAN GENTRY
7714 TULLY ST
HOUSTON TX 77016-2843

WILLIAM GRAY
9206 FOREST VIEW ST
HOUSTON TX 77078-3406

ROLANDO GUIFARRO
9306 LAKE FOREST BLVD
HOUSTON TX 77078-3414

MARIA GERMAN
7310 PHILIBERT LN
HOUSTON TX 77028-3944

DESSALYNN GREEN
15410 MESA
HOUSTON TX 77396

GROVER G HANKINS
616 W MAIN ST
LEAGUE CITY TX 77573-3760

DR. LE GILLAM
8710 VALLEY FOREST DR
HOUSTON TX 77078-3741

BIRDIE GREER
5810 LANGLEY RD
HOUSTON TX 77016-3234

SHIRLEY HARRIS
8114 TALTON ST
HOUSTON TX 77028-1438

G IONA GIVENS SENIOR ASSISTANT CITY ATTO
CITY OF HOUSTON
PO BOX 1562
HOUSTON TX 77251-1562

DIANE GRIFFIN
8618 SUNDERLAND RD
HOUSTON TX 77028-1650

KEISHA HAYNES
9603 DEEPVALLEY
HOUSTON TX 77051

ALBERTO GOMEZ
18914 LAKE FRONT DR
TOMBALL TX 77377-3502

LASHONDA GRIMES
9030 LAKE FOREST BLVD
HOUSTON TX 77078-3331

WALTER M HEADRY
8438 BIGWOOD ST
HOUSTON TX 77078-2210

JUAN GOMEZ
8914 LAKE FOREST BLVD
HOUSTON TX 77078-3329

ZENO GRIMES
9229 FOREST VIEW ST
HOUSTON TX 77078-3405

JENEVER HELAIRE
11025 MAPLE LN
HOUSTON TX 77016

ERNESTO HEMER
8140 E HOUSTON RD
HOUSTON TX 77028-2023

SONIA D JENKINS
8614 SUNDERLAND RD
HOUSTON TX 77028-1650

GEORGE L KENNARD
HARRIS COUNTY POLLUTION CONTROL
PO BOX 6031
PASADENA TX 77506-0031

SHARON HENDERSON
8022 MILEY ST
HOUSTON TX 77028-4638

GEORGE JOHNSON
9226 LAKE FOREST BLVD
HOUSTON TX 77078-3412

TOM KIRKPATRICK ASSETRISK MGR
AMERICAN NATIONAL INSURANCE COMPANY
STE 207
2525 S SHORE BLVD
LEAGUE CITY TX 77573-6506

MARIA B HERNANDEZ
8140 E HOUSTON RD
HOUSTON TX 77028-2023

ISAAC JOHNSON
8538 FURRAY RD
HOUSTON TX 77028-3508

ELIZABETH KLIEVER
9210 MIRAWOOD ST
HOUSTON TX 77078-3417

NATALIO HERNANDEZ
8140 E HOUSTON RD
HOUSTON TX 77028-2023

KATHRINE JOHNSON
9226 LAKE FOREST BLVD
HOUSTON TX 77078-3412

GLORIA LANE
8914 VALLEY HOLLOW DR
HOUSTON TX 77078-3203

FREDA HICKS
206 CASTLE WAY LN
HOUSTON TX 77015-2031

MATTIE JOHNSON
6219 ANNUNCIATION ST
HOUSTON TX 77016-1340

SHAREEN LARMOND
OFFICE OF SENATOR JOHN WHITMIRE
803 YALE ST
HOUSTON TX 77007-1537

KELVIN HUBERT
7930 CRESTVIEW DR
HOUSTON TX 77028-2602

MARSHALL JOLANTEN
5231 YORKWOOD ST
HOUSTON TX 77016-2639

RACHEL LEDAY
8030 SNOWDOW
HOUSTON TX 77028

STEVE HUPP
HARRIS COUNTY POLLUTION CONTROL
PO BOX 6031
PASADENA TX 77506-0031

CALVIN JONES
5603 YORKWOOD ST
HOUSTON TX 77016-2616

ALFREDA LEHMAN
8438 BIGWOOD ST
HOUSTON TX 77078-2210

MICHAEL HURRY
8906 LAKE FOREST BLVD
HOUSTON TX 77078-3329

STACY JONES
425 HOFFMAN ST
HOUSTON TX 77020-3035

JAMES H LEONARD
8025 MILEY ST
HOUSTON TX 77028-4637

LEIGH ING
1307 MARSHALL LN
AUSTIN TX 78703-4028

WILLENE JONES
11206 CHEEVES DR
HOUSTON TX 77016-2107

MELBA E LEWIS
6006 POLLY ST
HOUSTON TX 77016-4247

JOANN JEFFERSON
10122 PORTO RICO RD
HOUSTON TX 77041-7540

WILLIAM JONES
14623 TWISTED PECAN CT
HOUSTON TX 77015-1762

SHELIA LEWIS
6302 TIDWELL RD
HOUSTON TX 77016-4722

OLLIE LOMAN
8208 KELLETT ST
HOUSTON TX 77028-1518

LEE MAULING
8952 LAS CRUCES CIR
HOUSTON TX 77078-3338

SHINLEY MILLIGAN
8023 PACO VISTA DR
HOUSTON TX 77044

A LOPEZ
3667 ROYAL
HOUSTON TX 77045

SHIRLEY A MAYES
10622 CASTLETON ST
HOUSTON TX 77016-2602

MARIA MILLS
8101 HOMEWOOD LN
HOUSTON TX 77028-1917

R LYLES
16906 HIGHMORE DR
HUMBLE TX 77396-1346

JACQUELINE MAYFROM
5409 VAN ZANDT ST
HOUSTON TX 77016-1828

JOSE MINSAY
9222 LAKE FOREST BLVD
HOUSTON TX 77078-3412

HECTOR MADRIGAL
8905 LAS CRUCES CIR
HOUSTON TX 77078-3337

JACKIE MAYHORN
5409 VAN ZANDT ST
HOUSTON TX 77016-1828

RAY MONTES
9210 FOREST VIEW ST
HOUSTON TX 77078-3406

WALTER MAGARIN
9118 LAKE FOREST BLVD
HOUSTON TX 77078-3333

DONNA MCCANDLESS
9338 RICHLAND DR
HOUSTON TX 77078-4120

MARIA MORALES
8913 LAKE FOREST BLVD
HOUSTON TX 77078-3328

OMAR MARTINEZ
9105 LAKE FOREST BLVD
HOUSTON TX 77078-3332

ERNEST MCGOWEN SR
9010 PARKETTE DR
HOUSTON TX 77078-3306

JAMES MORGAN
8918 LAKE FOREST BLVD
HOUSTON TX 77078-3329

ROSA MARTINEZ
9105 LAKE FOREST BLVD
HOUSTON TX 77078-3332

PETNIA MCKELVEY
7517 E HOUSTON RD
HOUSTON TX 77028-3533

WILMA F MORGAN
8918 LAKE FOREST BLVD
HOUSTON TX 77078-3329

JESUS MASENOR
9134 LAKE FOREST BLVD
HOUSTON TX 77078-3333

STEPHANIE MELTON
8117 HOMEWOOD LN
HOUSTON TX 77028-1917

MARY MORRISON
8821 DARIEN ST
HOUSTON TX 77028-1711

REMARD MASON
7701 BIGWOOD ST
HOUSTON TX 77016-3915

ARTURO G MICHEL CITY ATTORNEY
CITY OF HOUSTON
PO BOX 1562
HOUSTON TX 77251-1562

JAMES MUKES JR
8109 SNOWDEN ST
HOUSTON TX 77028-1425

CHANA MAULING
8952 LAS CRUCES CIR
HOUSTON TX 77078-3338

MS BETTY J MIDDLETON
11215 BLADES ST
HOUSTON TX 77016-2006

VERONICA MURRAY
16803 CITY VIEW PL APT20
HOUSTON TX 77060-2525

HENRY EARL MYLEO
5606 YORKWOOD ST
HOUSTON TX 77016-2617

ERICA ORTIZ
9403 ARVIN ST
HOUSTON TX 77028-1209

JULIA PIERCE
6523 MOHAWK ST
HOUSTON TX 77016-2211

GULA L BUSH MYLES
5119 FARB DR
HOUSTON TX 77016-2909

DERRICK D OWENS
5706 BRIARWICK LN
HOUSTON TX 77016-2606

JOE L PINZON
9230 N GREEN RIVER DR
HOUSTON TX 77078-4230

MR OTIS R MYLES
5606 YORKWOOD ST
HOUSTON TX 77016-2617

MONICA OWENS
5706 BRIARWICK LN
HOUSTON TX 77016-2606

ANA PORTILLO
9114 LAKE FOREST BLVD
HOUSTON TX 77078-3333

PEARLIE MYLES
5606 YORKWOOD RD
HOUSTON TX 77016-2617

DIANA PALACIOS
8140 E HOUSTON RD
HOUSTON TX 77028-2023

JAIRO PORTILLO
9114 LAKE FOREST BLVD
HOUSTON TX 77078-3333

AMBER NEUMAN
5517 HOPPER RD
HOUSTON TX 77016-1808

PERSCILA PALACIOS
8140 E HOUSTON RD
HOUSTON TX 77028-2023

BARRY PRICE
5629 VAN ZANDT ST
HOUSTON TX 77016-1832

JASMIN NUNEZ
8905 LAS CRUCES CIR
HOUSTON TX 77078-3337

SNEHAL PATEL
HARRIS COUNTY ATTORNEY'S OFFICE
ROOM 910
1310 PRAIRIE ST
HOUSTON TX 77002-2045

PEARLIE J PRICE
9222 OAK KNOLL LN
HOUSTON TX 77078-4026

RONALD ODELL
10950 BEAUMONT HWY
HOUSTON TX 77078-4804

LIBRADO PENA
6740 LAWNDALE ST
HOUSTON TX 77023-2415

MRS THELMA PRICE
5630 VAN ZANDT ST
HOUSTON TX 77016-1833

BARBARA J OLNEIL
6826 HEATH ST
HOUSTON TX 77016-2125

JAMES PERKINS
9137 LAKE FOREST BLVD
HOUSTON TX 77078-3332

KENNETH RAMIREZ
BROWN MCCARROLL LLP
111 CONGRESS AVE STE 2300
AUSTIN TX 78701-4061

DONNA ORITZ
9403 ARVIN ST
HOUSTON TX 77028-1209

ANDREA R PHYLAR
10618 BAINLODGE
HOUSTON TX 77016

ROBERTO RAMIREZ
9126 LAKE FOREST BLVD
HOUSTON TX 77078-3333

IVEHE ORTEDA
8822 PARKEHE DR
HOUSTON TX 77078

TIMOTHY PHYLAR
10618 BAINBRIDGE ST
HOUSTON TX 77016-2624

TERRY RANDLE
5607 YORKWOOD ST
HOUSTON TX 77016-2616

BEVERLY RANDOLPH
7326 GORE DR
HOUSTON TX 77016-3446

MARIA RIVERA
9221 MIRAWOOD ST
HOUSTON TX 77078-3416

ANNIE SCOTT
9722 SEEKER ST
HOUSTON TX 77078-2836

ZANDRA RICHARD
7801 ETHEL ST
HOUSTON TX 77028-4405

BILL ROBBINS
8922 LAKE FOREST BLVD
HOUSTON TX 77078-3329

DOROTHY SCOTT
7621 TEESDALE DR
HOUSTON TX 77028-1005

JOEL & LOIS RICHARDS
8938 MADERA RD
HOUSTON TX 77078-2519

YOLANDA ROBERSON
9815 DENNING DR
HOUSTON TX 77078-3107

MILDRED SCOTT
10123 VALLEY CLUB DR
HOUSTON TX 77078-3723

ETHEL RICHARDSON
10614 CASTLETON ST
HOUSTON TX 77016-2602

PAUL ROBERSONS
5810 YORKWOOD ST
HOUSTON TX 77016-2621

PATRICIA SCOTT
PO BOX 1
HIGHLANDS TX 77562-0001

RUBY RICHARDSON
5706 BRIARWICK LN
HOUSTON TX 77016-2606

CHARLES ROBERTS
9109 LAZYDALE LN
HOUSTON TX 77078-3339

PATRICIA SCOTT
6834 HOPPER RD
HOUSTON TX 77016-2230

RICHARD D RIDLEY
5511 YORKWOOD ST
HOUSTON TX 77016-2614

LEANN ROBINSON
5810 YORKWOOD ST
HOUSTON TX 77016-2621

MAXINE L SEAES
5106 NOLRIDGE DR
HOUSTON TX 77016-2929

TINA M RIDLEY
5511 YORKWOOD ST
HOUSTON TX 77016-2614

BETTY RODGERS
9109 LAZYDALE LN
HOUSTON TX 77078-3339

IMY M SENEGAL
8532 GREEN RIVER DR
HOUSTON TX 77028-2835

CRISTINA RIOS
9222 LAKE FOREST BLVD
HOUSTON TX 77078-3412

DONALD & MAIDA SAMPAY
11226 TAMWORTH DR
HOUSTON TX 77016-2131

MADLINE SHEPHERD
6406 LOCKWOOD DR
HOUSTON TX 77028-4128

ESTEBOW RIVERA
9221 MIRAWOOD ST
HOUSTON TX 77078-3416

TP SAMUEL
8917 LAKE FOREST BLVD
HOUSTON TX 77078-3328

HARVEY SIM
7274 WILEY RD
HOUSTON TX 77016-3433

GUADALUPE RIVERA
9221 MIRAWOOD ST
HOUSTON TX 77078-3416

RONALD SCHOGGIN
2427 VENHATEN
HOUSTON TX 77839

HELMA SMITH
10603 BARNHAM ST
HOUSTON TX 77016-2625

IVA SMITH
5618 BRIARWICK LN
HOUSTON TX 77016-2605

LINDA STOOT
9206 FOREST VIEW ST
HOUSTON TX 77078-3406

MARTIN TOVAR
8905 LAS CRUCES CIR
HOUSTON TX 77078-3337

LAWRENCE D SMITH
10603 BARNHAM ST
HOUSTON TX 77016-2625

MARICELLA SUENOZ
9239 LAKE FOREST BLVD
HOUSTON TX 77078-3400

DAVID TURNER
16803 CITY VIEW PL APT 20
HOUSTON TX 77060-2525

JAVIER SOBREVILLA
8960 LAS CRUCES CIR
HOUSTON TX 77078-3338

HELEN SWANSON
6614 HARTWICK RD
HOUSTON TX 77016-1414

ROBERT TURNER
7525 LAURA KOPPE RD
HOUSTON TX 77028-1805

MIGUEL A SORTO
8430 FLINTRIDGE DR
HOUSTON TX 77028-2722

MARK SWEENEY
11602 LANEVIEW DR
HOUSTON TX 77070-2592

ROBERT VALDEZ
9209 MONTERREY ST
HOUSTON TX 77078-3420

NAOMI SPILLER
8109 STERLINGSHIRE ST
HOUSTON TX 77078-2738

MAE SYKER
6719 KALEMONT DR
HOUSTON TX 77050

EARLENE VALENTINE
5231 YORKWOOD ST
HOUSTON TX 77016-2639

CHARLIE C SQUARE
5214 YORKWOOD ST
HOUSTON TX 77016-2640

CHARLIE WHEELER TAYLOR
4522 WAYNE ST
HOUSTON TX 77026-2728

JURSICO VASQUEZ
8140 E HOUSTON RD
HOUSTON TX 77028-2023

LILAH PEARL SQUARE
5214 YORKWOOD ST
HOUSTON TX 77016-2640

JAMES F TAYLOR
3534 ELMRIDGE ST
HOUSTON TX 77025-4112

MARIA VELASQUEZ
9722 LINARES DR
HOUSTON TX 77078-2000

LINDA STEPHENS
5703 YORKWOOD ST
HOUSTON TX 77016-2618

THELMARIE THARP
9215 LINDA VISTA RD
HOUSTON TX 77078-4021

ADRIANA VILLAGARA
735 MANOR ST
HOUSTON TX 77015-4178

GLENDIA STEVENS
9030 LAKE FOREST BLVD
HOUSTON TX 77078-3331

KEITH TOLIVER
10413 CASTLETON ST
HOUSTON TX 77016-3111

JESUS VILLASENOR
9202 LAKE FOREST BLVD
HOUSTON TX 77078-3412

JAMES STEVENS
9030 LAKE FOREST BLVD
HOUSTON TX 77078-3331

ADRIANA TOVAR
8905 LAS CRUCES CIR
HOUSTON TX 77078-3337

ANN WALKER
9148 LAZYDALE LN
HOUSTON TX 77078-3340

DARNELL L WALKER
6535 HOLLOW OAKS DR
HOUSTON TX 77050-3717

RAMONA WILKINS
5230 YORKWOOD ST
HOUSTON TX 77016-2640

JAMAL WILSON
625 WILSON RD
HUMBLE TX 77338-5051

FLOYD WALKER
9148 LAZYDALE LN
HOUSTON TX 77078-3340

ELIZABETH WILLIAMS
9110 LAKE FOREST BLVD
HOUSTON TX 77078-3333

KYLE WILSON
8023 PACO VISTA DR
HOUSTON TX 77044

FRANK WATSON
10910 WHITE THORN ST
HOUSTON TX 77016-1854

HELEN WILLIAMS
5709 VAN ZANDT ST
HOUSTON TX 77016-1834

LAURA WILSON
11931 SILVER ISLAND CIR
HOUSTON TX 77067-1117

LOMMIE WATSON
7733 NAVASOTA ST
HOUSTON TX 77016-2830

HELENA WILLIAMS
5709 VAN ZANDT ST
HOUSTON TX 77016-1834

LORETHA WILSON
8825 TIDWELL RD
HOUSTON TX 77078-3315

ROSE WATSON
10614 BARNHAM ST
HOUSTON TX 77016-2626

IV WILLIAMS
9110 LAKE FOREST BLVD
HOUSTON TX 77078-3333

MARY WILSON
8434 SPAULDING ST
HOUSTON TX 77016-6032

MAMIE G WELLS
PO BOX 11777
HOUSTON TX 77293-1777

MS MAUREEN WILLIAMS
6223 ANTHA ST
HOUSTON TX 77016-4317

SHAQVILLE WILSON
625 WILSON RD
HUMBLE TX 77338-5051

GWENDOLYN WHITFIELD
9314 LAKE FOREST BLVD
HOUSTON TX 77078-3414

ROBERT E WILLIAMS
9110 LAKE FOREST BLVD
HOUSTON TX 77078-3333

TIERRA WILSON
625 WILSON RD
HUMBLE TX 77338-5051

MARYLAND WHITTAKER
9014 LIVINGS ST
HOUSTON TX 77028-1624

ROY WILLIAMS
5218 YORKWOOD ST
HOUSTON TX 77016-2640

SECONDIE WINN-GREEN
7437 LAURA KOPPE RD
HOUSTON TX 77028-1727

CHRISTEL WILKINS
5230 YORKWOOD ST
HOUSTON TX 77016-2640

STEVEN P WILLIAMS
9110 LAKE FOREST BLVD
HOUSTON TX 77078-3333

BRIDGET WOFFORD
7706 AUDUBON FOREST DR
HUMBLE TX 77396-2203

HERMISE M WILKINS
5230 YORKWOOD ST
HOUSTON TX 77016-2640

TONY WILLIAMS
BFI
5757 OATES RD
HOUSTON TX 77078-4811

DAMITA WYATT
8642 VALLEY WEST CT
HOUSTON TX 77078-3607

CLARENCE ZENON
9514 BALSAM LN
HOUSTON TX 77078-3102

EARLINE ZENON
9514 BALSAM LN
HOUSTON TX 77078-3102

TCEQ PERMIT NUMBER 261B

APPLICATION BY

McCarty Road Landfill TX, LP

Type I Municipal Solid Waste Landfill Facility

Harris County

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BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

CHIEF CLERK'S OFFICE

200 SEP 11 2 50

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on the application filed by McCarty Road Landfill TX, LP for the amendment to Permit Number 261B, and on the Executive Director's preliminary decision:

As required by Title 30 Texas Administrative Code § 55.156 (30 TAC § 55.156), before an application is approved, the Executive Director (ED) prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk timely received formal written and oral comments from the following persons and groups: Elliot Arceneaux, Effie B. Arceneaux, W. E. Arthur, Ambra D. Asberry, Debra Asberry, Maurice Asberry, Odell Asberry, Patricia S. Avalos, Martina Cartwright, Tommy R. Banks, Mary Barnes, Nicole R. Bates, Rhonda Battle, Ruthie M. Bell, Wesley Benard, Brenda Bolden, Roy F. Candless, Earnestine Champine, Concerned Citizens, Andrea Cooksey, Chris Cornett, Scott L. Cornett, Bernice Cranford, Lawrence Cranford, Donte Curtis, Robin Germain Curtis, Eval Duracell, Joe Dickens, Lesley Ann Dickens, Lee R. Dunham, Mattie Ebon, Elfin Franklin, Texas State Senator Mario Galleon, Jr., on behalf of several members of the public, Fran Gentry, Maria German, United States Representative Raymond (Gene) Green, Seconded Won Green, Birdie Greer, Dr. Le Killam, Mary Godhra, Shirley Harris, Walter M. Heady, Mattie Johnson, Marshall Galantine, William Jones, Gloria Lane, James H Leonard, Melba Lewis, R. Lyes, Jacqueline Mayfrom, Jackie Mayhorn, Donna McCandless, Roy McCandless, Stephanie Melton, Betty J. Middleton, James Mukes Jr., Henry Earl Myleo, Eula L. Bush Myles, Otis R. Myles, Pearl Myles, Amber Neuman, Northeast Environmental Justice Association (NEEJA), Barbara J. Oneil, Derrick D. Owens, Monica Owens, Andrea R. Phylar, Timothy Phylar, Pollution Control Division of Harris County Public Health & Environmental Services (HCPHES), Barry Price, Thelma Price, Terry Randall, Lois Richards, Joel Richards, Leann Robinson, Donald Sampay, Maida Sampay, T.P. Samuel, Dorothy Scott, Maxine L. Seaes, Imy M Senegal, Ima Smith, Javier Sobrevilla, Helen Swanson, Mae Syker, Thelmarie Tharp, Earlene Valentine, Darrell Walker, Lommie Watson, Rose Watson, Mamie G. Wells, Christel Wilkins, Hermise M. Wilkins, Ramona Wilkins, Helen Williams, Helena Williams, Ms Maureen Williams, Roy Williams, Laura Wilson, Mary Wilson, Bridget Wofford, Clarence Zenon, Earline Zenon. Lawrence Cranford, Joe Pinzon, Buck Buchanan, Ernest McGowan, Tommy Black, Louise Black, Andrea Cooksey, Mark Sweeney, Grover Hankins, Frank Watson, Weingarten entities which include Weingarten Realty Investors, WRI/7080 Express Lane, Inc., AN/WRI Partnership, Ltd., An/WRI Partnership #1, Ltd., and Eagle Ind., L.P. (collectively referred to as "Weingarten"). Notwithstanding the limitation in the rule to relevant and material, or significant comment, this Response addresses all timely public comments

received, whether or not withdrawn. If you need more information about this permit amendment application or the permitting process please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

1. GENERAL

1.1 Purpose:

This permit amendment application, submitted by McCarty Road Landfill TX, LP, requests a vertical expansion and continued operation of the MSW Type I McCarty Road Landfill in Harris County, Texas. The total permitted facility includes 458.25 acres of land, of which approximately 388.1 acres will be used for waste disposal. The maximum final elevation of final cover material will be 316.0 feet above mean sea level (MSL). The site will be authorized to accept the waste streams as listed below.

1.2 Wastes to be Accepted:

Solid waste to be disposed of will primarily consist of municipal solid waste resulting from, or incidental to, municipal, community, commercial, institutional, recreational and industrial activities, including garbage, putrescible wastes, rubbish, ashes, brush, street cleanings, dead animals, abandoned automobiles, construction-demolition waste, and yard waste. Class 1 nonhazardous industrial solid waste defined as such due to asbestos content, Class 2 nonhazardous industrial solid waste, Class 3 nonhazardous industrial solid waste, special waste (e.g., solidified sludges, dead animals, empty containers, regulated and nonregulated asbestos-containing materials), and other waste as approved by the Executive Director, may also be accepted. The landfill will not be authorized to accept waste materials other than those mentioned above, nor any waste streams that are expressly prohibited by Title 30 Texas Administrative Code (30 TAC) Chapter 330.

1.3 Waste Acceptance Rate:

Over the anticipated life of the facility, authorized wastes will be accepted at an average rate of approximately 6,532 tons-per-day, which results in an estimated life of approximately 10.9 years. The site currently receives approximately 2,190,000 tons-per-year or 2,777,425 cubic yards (assuming an in-place density of 1,577 lb/cy) of solid waste (6,000 tons-per-day based on a typical 365-day operating schedule). It is assumed that the incoming waste rate will increase at the same rate as the population of Harris, Montgomery, and Liberty counties, and surrounding areas. The

maximum annual waste acceptance rate is projected to be 2,577,265 tons-per-year or 3,268,567 cubic yards (assuming an in-place density of 1,577 pounds-per-cubic yard) of solid waste (7,061 tons-per-day based on a 365-day operating schedule). These projections are based on current market conditions, and may vary as market conditions change.

2. LOCATION AND SIZE

2.1 Location:

The McCarty Road Landfill is located within the City of Houston in Harris County, Texas at 5757A Oates Road, approximately 7 miles northeast of downtown Houston and approximately 3.5 miles north-northeast of the intersection of Interstate Highway 610 and Interstate 10.

2.2 Elevation and Coordinates of Permanent Benchmark:

Latitude:	N 29° 49' 22"
Longitude:	W 95° 14' 33"
Elevation:	45.53 feet above MSL

2.3 Size:

The total area within the permit boundary under the proposed permit amendment is approximately 458.25 acres.

3. FACILITY DESIGN, CONSTRUCTION, AND OPERATIONS

3.1 Facilities Authorized:

The permittee will be authorized to operate the facility subject to the limitations contained in the permit. All waste disposal operations will be limited to the units and other features identified in the Site Development Plan and the Site Operating Plan as follows:

3.1.1 A Type I municipal solid waste landfill facility with a disposal footprint of approximately 388.1 acres. The landfill will have two major fill areas, the pre-Subtitle D and Subtitle D areas. The pre-Subtitle D Area is divided into five sectors (Sectors A, B, C, D, E) and encompasses 335.0 acres, or approximately 86% of the total waste fill area. The Subtitle D Area is divided into four sectors (Sectors F1, F2, F3 [Phase 1], F3 [Phase 2]) and encompasses 53.1 acres, or approximately 14% of the total waste fill area. The landfill has a maximum below-grade excavation to elevation 1.8 feet

above MSL with continuous area filling with waste, and a maximum above-grade aerial fill to elevation 316.0 feet above MSL. The facility has a scale house, scales, flare facility, maintenance facility, office building, recycling plant, leachate storage tank, soil borrow area, drainage culverts and spillways, 25 ground-water monitoring wells, 32 soil vapor extraction wells, 242 vertical methane extraction wells, clay liner system in the pre-Subtitle D Area, and composite liner system and leachate collection system in the Subtitle D Area.

- 3.1.2 Access roads, temporary and permanent drainage features, all appurtenances, and other improvements shall be built, operated, and/or maintained in accordance with the conditions of the permit, Parts I - IV of the permit amendment application, and commission regulations. The facility shall be managed in a manner to protect human health and the environment.

4. LAND USE

- 4.1 The site is located within the City of Houston in Harris County, on the north side of the intersection of U.S. Highway 90 (also known as McCarty Road and the Beaumont Highway) and Oates Road, approximately 3.5 miles north-northeast of the intersection of Interstate Highway 610 and Interstate Highway 10.
- 4.2 The City of Houston has no zoning or other provisions for general land use.
- 4.3 The surrounding land, within a one-mile radius of the site, is used for light and heavy industrial ventures, general commercial ventures, agriculture, undeveloped areas (mostly floodplain areas), public activities, and residential properties.
- 4.4 Specific land uses within the 1-mile boundary of the site include, but are not limited to, the McCarty Road Landfill offices and entry facilities, a GSF Energy LLC landfill gas-to-energy facility, a rail-served industrial park consisting of several businesses, numerous large motor freight companies, warehouses, shopping centers, the Cordell Brick Plant, the Greens Bayou Power Plant, 2 solid waste facilities (closed Type I Bluebonnet Landfill and active Type IV WCA Landfill), 11 residential neighborhoods with approximately 2,000 homes, 1 school, 8 churches, 1 cemetery, 1 golf course, and 1 park.

5. TRANSPORTATION AND ACCESS

- 5.1 The primary access routes to the site are U.S. Highway 90, Oates Road, Mesa Drive, and Interstate Highway Loop 610.
- 5.2 Direct access to the site is currently provided by US Highway 90, a four-lane state-

maintained highway intersecting Oates Road. Within 18 months after the approval of the major permit amendment application, the permittee will relocate the facility access road entrance from Oates Road to Mesa Drive. The location of the entrance facilities, such as the scales/scale house and offices, will remain unchanged. Mesa Drive is a four-lane major north-south roadway consisting of four travel lanes, paved shoulders, and a median. The two 33-foot asphalt travel ways are separated by a 30-foot median. Mesa Drive has a speed limit of 50 miles per hour. The legal maximum gross weight limit for the road is 80,000 pounds. Based on information obtained from the Texas Department of Transportation (TxDOT) the 2002 average daily traffic volume at the intersection of US Highway 90 and Mesa Drive is 36,000 vehicles per day traveling in both directions. For 2003, the application's traffic study determined a count of 4,922 vehicles per day for the intersection of US Highway 90 and Oates Road. The landfill facility is presently visited by an average of approximately 500 waste haul vehicles per day for the 7 days that the landfill is open per week. This information is contained in the application, and the application's traffic study indicates that the landfill access roads can sufficiently handle the current and anticipated future traffic volumes associated with this facility.

- 5.3 The nearest public use airport is the Houston Hobby Airport, which is located approximately 12.5 miles south of the site. The Federal Aviation Administration was contacted and did not object to the proposed permit amendment.

6. SURFACE WATER PROTECTION

6.1 Floodplain:

The 100-year floodplain extends along Greens Bayou, which runs to the east of the site. Over 4 feet of freeboard exists between the 100-year flood elevation in Greens Bayou and the limits of waste. The vertical expansion proposed in this permit amendment does not impact the flow of stormwater in Greens Bayou.

6.2 Stormwater:

Stormwater discharges through perimeter channels and detention ponds into Harris County Flood Control District (HCFCD) Ditch P116-00-00 to the north, HCFCD Ditch P114-00-00 to the south, and Greens Bayou to the east. Eight detention ponds are proposed to control stormwater from the landfill before discharging into the HCFCD channels. On September 12, 2003, the HCFCD issued an approval letter for the proposed drainage design associated with this vertical expansion.

6.3 Contaminated Water:

Stormwater which comes into contact with solid waste will be considered contaminated water. Contaminated water at the working face will be properly

contained and managed. Contaminated water will be pumped to a City of Houston sewer line or transported via tanker trucks to properly permitted offsite facility for treatment.

7. GROUND-WATER PROTECTION

7.1 Ground-water Protection:

To reduce the potential for impacts to groundwater at the site resulting from waste disposal operations, the final cover of pre-Subtitle D fill areas will consist of, from the top down, a 12-inch thick grassed erosion layer, and an 18-inch thick clay infiltration layer with a coefficient of permeability that will not exceed 1×10^{-5} cm/s. The final cover of the Subtitle D fill area consists of a 24-inch thick erosion layer, a drainage geocomposite, a 40-mil smooth (topslope) and textured (sideslope) linear low-density polyethylene synthetic membrane, and an 18-inch thick compacted clay infiltration layer with a coefficient of permeability that will not exceed 1×10^{-5} cm/s. The bottom and sides of the pre-Subtitle D fill areas are lined with either an in-situ clay liner or a 3-foot thick constructed clay liner. The bottom and sides of the Subtitle D fill area are lined with a 24-inch compacted clay subgrade overlain by a 60-mil high-density polyethylene flexible membrane, a leachate collection system, and a 24-inch protective soil cover layer, respectively from bottom to top.

7.2 Monitoring Wells:

The ground-water monitoring system, which will provide for early detection of potential releases from the facility, will consist of 25 ground-water monitoring wells that form the site Point of Compliance monitoring system. The ground-water monitoring network will be sampled, analyzed, and monitored in accordance with the procedures in the Ground-water Sampling and Analysis Plan (Attachment 11 of the permit amendment application), which is part of the facility permit.

8. CONTROL OF METHANE

- 8.1 The constructed final cover systems and the below grade liners, as described in Section 7.1 of this Background information, help reduce the potential of methane gas migration.
- 8.2 Landfill gas (LFG) migration is monitored around the perimeter of the facility utilizing 22 permanent landfill gas monitoring probes. Attachment 14 of the permit amendment application contains information about the LFG monitoring system and monitoring procedures. If the monitored methane gas is above the regulatory limits, the contingency plan contained in Attachment 14 will be implemented.
- 8.3 The site is currently operating an active LFG collection and control system (CCS).

Some modifications are proposed to adapt the existing CCS to the vertical expansion proposed in this permit amendment. The collected LFG is sent to a Landfill Gas-to-Energy facility, located adjacent to the site, for beneficial use.

9. SITE DEVELOPMENT AND OPERATION

The Site Development Plan (SDP), Part III of the permit amendment application, and the Site Operating Plan (SOP), Part IV, are intended to provide guidance from the design engineer to the facility site management and operating personnel to facilitate implementation, development, and operation of the solid waste management facility. The SOP is to provide an operating guide for site management to maintain the facility in compliance with the engineering design and applicable regulatory requirements of the TCEQ. These documents were prepared using 30 TAC Chapter 330 regulations and will become part of the facility permit if the proposed permit amendment is approved by the TCEQ.

10. PROTECTION OF ENDANGERED SPECIES

Correspondence with the United States Fish and Wildlife Service and the Texas Parks and Wildlife Department indicate that minimal to no impacts to threatened or endangered plant or animal species are expected from the continued operation of this facility.

11. PROTECTION OF WETLANDS

The only Section 404 Jurisdictional Areas located on or near the site are HCFCD channels P100-00-00 (Greens Bayou, located east of the site) and HCFCD Ditch P114-00-00, which is located along the southern portion of the site. No development is proposed within Section 404 Jurisdictional Areas. A wetland jurisdictional determination from the U.S. Corps of Engineers (USACE) is included in the application. The USACE letter included in the permit amendment application notes that no Department of the Army permit under Section 404 of the Clean Water Act is required for this project.

12. FINANCIAL ASSURANCE

Authorization to operate this facility is contingent upon the maintenance of financial assurance in accordance with 30 TAC Chapter 330 (Municipal Solid Waste), Chapter 37 (Financial Assurance), and the provisions contained in the permit.

In compliance with the requirements of 30 TAC Section 330.111, the permittee submitted a revised Site Operating Plan on October 28, 2005 to address TCEQ rule changes to Subchapter F of 30 TAC Chapter 330, effective December 2, 2004. The rule changes affected topics such as, but not limited to, fire protection, pickup of litter along access roads, facility operating hours, access control, and the management of ponded water. In addition to these topics, other revisions were requested by the TCEQ to provide more specificity in the SOP concerning such categories as: the qualifications and experience of the facility staff, training topics, the dedicated equipment for landfill operations, waste

unloading procedures, the size of the working face(s), the Odor Management Plan, the coverage of waste, the management of special and prohibited wastes, and record keeping.

Procedural Background

This application is for an amendment to a municipal solid waste landfill permit. The permit application was received on April 6, 2004 and declared administratively complete on April 19, 2004. The Notice of Receipt and Intent to Obtain Permit (public notice) for this permit amendment application was published on April 29, 2004 in the Houston Chronicle. A public meeting was held on December 2, 2004 at the Shadydale Elementary School in Houston. The Notice of Application and Preliminary Decision was published on January 14, 2005 in the Houston Chronicle. The comment period formally closed on February 14, 2005. Subsequently, the applicant submitted a revision to its Site Operating Plan (SOP), consistent with revisions to the Municipal Solid Waste Rules, adopted in 2004. In response to comments from US Representative Green, the Executive Director extended the comment period to accept and consider public comments on the permit amendment application until June 15, 2005.

COMMENTS AND RESPONSES

Similar comments/portions of comments and concerns that can be addressed by one explanatory response are grouped to minimize redundancy.

To the extent that this permit amendment application is processed under the Chapter 330 Municipal Solid Waste Rules in place in April, 2004, all references to Chapter 330 rules in responses to comments below pertain to the Rules as they existed prior to revisions adopted in March 2006.

COMMENT 1: Several commenters expressed concern that the proposed expansion would result in odor problems. Comments received indicate that the landfill in its current state releases bad odors in the neighboring areas. One commenter stated that there is a smell akin to something being burned about three or four nights a week. Another commenter indicated that the odor problem exists throughout the entire year. Also, a comment received alleged that a city inspector found that no odor problem existed, although he failed to roll down the window of his automobile. A commenter stated that odor management provisions contained within the Site Operating Plan on Air Quality/LFG Control are vague and unenforceable. Specifically, the commenter questions the sufficiency of language concerning multiple odor management practices, including the odor-control mister system, leachate handling, and control efforts associated with gas collection wells. This commenter offers performance-based provisions for inclusion in the permit and Site Operating Plan. (Grover Hankins, Dr. Gillam, Lawrence Cranford, Joe Pinzon, Bernice Cranford, Lois Richards, Martina Cartwright, Jackie Mayhorn, Robin Germain Curtis, NEEJA, HCPHES, Weingarten).

RESPONSE 1: Under the TCEQ Municipal Solid Waste Rules [30 TAC Chapter 330], McCarty Road Landfill TX, LP is required to operate the landfill in such a way that it does

not create a nuisance, and specifically, to minimize odors, vectors, windblown litter or waste, etc. through the use of proper daily cover and compaction procedures at the landfill. Pursuant to 30 TAC § 330.133(a), landfills such as the McCarty Road Landfill that operate on a 24-hour basis are required to cover the working face or active disposal area at least once every 24 hours with 6 inches of clean, well-compacted earthen material (alternate material daily cover may be allowed by permit provision or permit modification, provided the alternative material is shown effective).

Additionally, an Odor Management Plan (Section 4.10.2) has been added to the SOP to more clearly define what measures will be maintained and added to address the complaints above. To supplement in-place odor management practices equipment, additional measures to be added include the progressive expansion of the facility landfill gas collection and control system, the installation of a larger enclosed gas flare, restrictions on the size of the working face during operating hours (dependent on incoming waste rate), minimization of the working face area during off-peak hours (10:00 PM - 5:00 AM), the use of portable deodorizers, and the installation of a deodorizer curtain.

The Executive Director has determined that the draft permit meets applicable TCEQ regulations. If objectionable odors occur, the owner or operator must initiate appropriate measures to alleviate the condition. Procedures concerning the covering of waste at the facility are addressed in the Site Operating Plan, Part IV of the application. If the owner or operator follows these procedures, odors from the landfill should be reduced. In addition, if the permit is approved, it would not limit the ability of a landowner to use common law remedies for a nuisance in response to activities that interfere with his use and enjoyment of his property. For information on TCEQ's odor complaint investigation procedures, interested persons are encouraged to visit the following webpage:

http://www.tceq.state.tx.us/compliance/complaints/protocols/oder_protodef.html

COMMENT 2: Certain commenters expressed concern about the presence of large numbers of birds and vector infestations, including insects and rodents at and around the landfill, and the potential for significant increase in bird and vector infestation due to the increase in volume of waste accepted by the landfill under the proposed permit amendment. (NEEJA, Dr. Gillam, Martina Cartwright).

RESPONSE 2: According to the TCEQ's MSW rules, specifically 30 TAC Section 330.151, the site operator must take the appropriate steps to prevent and control onsite populations of disease vectors using proper compaction and daily cover procedures, and the use of other approved methods when needed.¹ The Applicant's proposed vector control plan is addressed in the Site Operating Plan of the application. The application states that the operator will take

¹ The TCEQ's MSW Rules define a vector as an agent, such as an insect, snake, rodent, bird, or animal capable of mechanically or biologically transferring a pathogen from one organism to another.

the appropriate steps to prevent and control onsite populations of disease vectors through the proper placement and compaction of daily cover over the waste. The revised SOP also contains a Bird Abatement Plan. The Executive Director determined that the application complied with the requirements of 30 TAC Section 330.151. The application and its contents are incorporated into the permit amendment currently under consideration for issuance by the TCEQ.

Individuals are encouraged to report any concerns about nuisance issues or suspected noncompliance with terms of any permit or other environmental regulation by contacting the TCEQ Houston Regional Office at (713) 767-3500, or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. If the facility is found to be out of compliance with the terms and conditions of the permit, it will be subject to possible enforcement action. Citizen-collected evidence may be used in such an action. See 30 TAC Section 70.4, Enforcement Action Using Information Provided by Private Individual, for details on gathering and reporting such evidence. The TCEQ has long had procedures in place for accepting environmental complaints from the general public but now has a new tool for bringing potential environmental problems to light. Under the citizen-collected evidence program, individuals can provide information on possible violations of environmental law and the information can be used by the TCEQ to pursue enforcement. In this program, citizens can become involved and may eventually testify at a hearing or trial concerning the violation. For additional information, see the TCEQ publication, "Do You Want to Report an Environmental Problem? Do You Have Information or Evidence?" This booklet is available in English and Spanish from the TCEQ Publications office at 512-239-0028, and may be downloaded from the agency website at www.tceq.state.tx.us (under Publications, search for Document No. 278.)

COMMENT 3: Several commenters expressed past, present, and future health-related concerns, and commented about illnesses such as cancer, emphysema, respiratory illness, and allergies (Martina Cartwright, Elliot Arceneaux, Effie B. Arceneaux, W. E. Arthur, Ambra D. Asberry, Debra Asberry, Maurice Asberry, Odell Asberry, Patricia S. Avalos, Tommy R. Banks, Mary Barnes, Rhonda Battle, Ruthie M. Bell, Wesley Benard, Brenda Bolden, Roy F. Candless, Earnestine Champine, Concerned Citizens, Chris Cornett, Scott L. Cornett, Bernice Cranford, Lawrence Cranford, Donté Curtis, Eval Duracell, Joe Dickens, Lesley Ann Dickens, Lee R. Dunham, Mattie Ebon, Elfin Franklin, Fran Gentry, Maria German, United States Representative Gene Green, Seconded Won Green, Birdie Greer, Mary Godhra, Shirley Harris, Walter M. Heady, Mattie Johnson, Marshall Galantine, William Jones, Gloria Lane, James H. Leonard, Melba Lewis, R. Lyes, Jacqueline Mayfrom, Donna McCandless, Roy McCandless, Stephanie Melton, Betty J. Middleton, James Mukes Jr., Henry Earl Myleo, Eula L. Bush Myles, Otis R. Myles, Pearl Myles, Amber Neuman, Barbara J. Oneil, Derrick D. Owens, Monica Owens, Andrea R. Phylar, Timothy Phylar, Barry Price, Thelma Price, Terry Randall, Leann Robinson, Donald Sampay, Maida Sampay, T.P. Samuel, Dorothy Scott, Maxine L. Seaes, Imy M. Senegal, Ima Smith, Javier Sobrevilla, Helen Swanson, Mae Syker, Thelmarie Tharp, Earlene Valentine, Darrell Walker, Lommie Watson, Rose Watson, Mamie G. Wells, Christel Wilkins, Hermise M. Wilkins, Ramona Wilkins, Helen Williams,

Helena Williams, Ms Maureen Williams, Roy Williams, Laura Wilson, Mary Wilson, Bridget Wofford, Clarence Zenon, Earline Zenon Dr. Gillam, Donna McCandless, Joe Pinzon, Lois Richards, Robin Germain Curtis, Frank Watson, Senator Gallegos, Jr., Dan Doherty, HCPHES, Weingarten, NEEJA)

RESPONSE 3: The Executive Director has received no information that shows that the proposed facility presents a threat to human health or the environment. The Executive Director determined that the proposed landfill was designed in compliance with the Texas Solid Waste Disposal Act (TSWDA), and with the TCEQ's MSW Rules developed to protect human health and the environment.² If the proposed landfill is constructed and operated as shown in the application and as required by the regulations, the Executive Director expects human health and the environment to be protected.

COMMENT 4: Comments indicated a concern regarding airborne contaminants stemming from landfill operations, and hazards related to dust and airborne particles. The comments also express concern about a the potential for an increase in air emissions resulting from increase in truck traffic. (Dr. Gillam, Joe Pinzon, Bernice Cranford, Mark Sweeney, Senator Gallegos, Jr., Dan Doherty, NEEJA, Martina Cartwright, Weingarten)

RESPONSE 4: This is a municipal solid waste permit application and air quality is outside the scope of this review. Should the nature of the facility's operations necessitate, the applicant may be required to apply for separate permits which regulate air quality. That being said, the applicant is required to operate the landfill in such a way that it does not create a nuisance. In order to prevent the creation of dust reaching the level of a nuisance, the SOP requires that the applicant maintain landfill haul roads and access roads in a reasonable dust-free condition by periodic spraying from a water truck. During dry conditions, the landfill manager will routinely inspect the site and establish a frequency, if necessary, to spray the access roads with water to prevent nuisance conditions from developing (SOP Section 4.10.1). Additional landfill manager monitoring obligations are set forth in SOP Section 2.1.2.

Individuals are encouraged to report any concerns about nuisance issues or suspected noncompliance with terms of any permit or other environmental regulation by contacting the TCEQ Houston Regional Office at (713) 767-3500, or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. If the facility is found to be out of compliance with the terms and conditions of the permit, it will be subject to possible enforcement action.

² The Texas Solid Waste Disposal Act is codified in Chapter 361 of the Texas Health and Safety Code. The TCEQ's MSW Rules are located in Chapter 330 of Title 30 of the Texas Administrative Code.

COMMENT 5: Comments indicated a concern regarding the tracking of mud onto area streets and public byways by trucks entering and exiting the landfill. (Weingarten, HCPHES, Dr. Gillam, Tommy Black)

RESPONSE 5: The Texas Department of Transportation performed a review of the permit amendment application, and submitted a September 22, 2004 letter to the TCEQ with their findings. One of the three findings was that provisions should be taken by the applicant to prevent the tracking of mud onto the highway. In addition, state rule 30 TAC Section 330.127(a) requires that the tracking of mud from a site onto public roadways be minimized. To meet these two criteria, the applicant describes in Section 4.12 of Part IV of the application how the paved entrance road and crushed-stone internal roads minimize the tracking of mud by vehicles both exiting and entering the landfill facility. Within six months of issuance of the permit amendment, the applicant would also install a truck wheel washing station near the facility entrance to help reduce the tracking of mud by vehicular traffic. The landfill manager will also be responsible for inspecting the site during wet weather and implementing additional mud reduction measures should the routine procedures not be adequate. The applicant also proposes to move the primary entrance into the facility from Oates Road to Mesa Drive within 18 months of issuance of the permit amendment. This would create a 1.5-mile long asphalt road in which to address the tracking of mud by vehicular traffic prior to leaving the site. After the proposed new entrance road is completed, the truck wheel washing station would continue to be utilized in reducing the tracking of mud when needed.

Additionally, based upon the comments received and discussions which ensued between the applicant and HCPHES, the language in the draft permit pertaining to the tracking of mud offsite has been revised to include the following language:

"Tracking of mud and associated debris onto public roadways must be removed at least once per day on days when mud and associated debris are being tracked onto the public roadway."

COMMENT 6: Several commenters indicated that the landfill should be sited at a different location. These comments suggest that the landfill has existed at this location for a long period of time, and that the landfill operations should be relocated to another geographical location. Some commenters stated that the community has been unfairly targeted as the site of the landfill based upon the economic and/or racial makeup of the community. One commenter questions the absence of environmental justice information in the Land Use section of the application, in light of this landfill being subject of past environmental justice studies. (Dr. Gillam, Lawrence Cranford, Joe Pinzon, Bernice Cranford, Lois Richards, Martina Cartwright, Jackie Mayhorn, Tommy Black, Robin Germain Curtis, Frank Watson, Andrea Cooksey, Louise Black, Senator Gallegos, Jr., Dan Doherty, Joel Richards, NEEJA)

RESPONSE 6: The Commission's municipal solid waste regulations at 30 TAC Section 330.53(b)(8) require that the Commission consider the impact of a site upon a city, community,

group of property owners, or individuals in terms of compatibility of land use, zoning, community growth patterns, and other factors associated with the public interest. To assist the Commission's consideration of these issues, the applicant is required to include a description of the land use within one mile of the proposed facility and the growth trend and direction of major development for the nearest community. The Executive Director has determined that the required information concerning surrounding land uses was submitted in the application.

While the TCEQ and EPA collaborate on the cumulative impacts from permitting activities, rules, and policies of both agencies, the TCEQ continues to actively manage a State Environmental Equity Program. Low-income and minority communities often believe that they are burdened with a disproportionate share of environmental risks. Hostilities can develop between these communities and the industries or facilities involved, making good-faith efforts to resolve disputes, address concerns, and seek solutions ineffective. The TCEQ's Environmental Equity Program was established in 1993 to help counter this trend by improving communication between government, local communities, and neighboring industries. Individuals may raise environmental equity or environmental justice concerns with TCEQ staff through a toll-free number, 1-800-687-4040, or at the following address and phone and fax numbers:

Environmental Equity (MC-108)
Texas Commission on Environmental Quality
P.O. Box 13087 Austin, TX 78711-3087
512/239-4000
512/239-4007 (fax)

Additional information can be found on the following website:

http://www.tceq.state.tx.us/comm_exec/opa/envequ.html

COMMENT 7: Several commenters indicated that the proposed permit amendment and continued operations at the landfill will have a negative effect on the property values of real estate within the community. (W. E. Arthur, Weingarten, Lawrence Cranford, Joe Pinzon, Andrea Cooksey, Senator Gallegos, Jr., Dan Doherty)

RESPONSE 7: Concerning siting and land use compatibility issues for municipal solid waste landfills, the Municipal Solid Waste Rules do not address the consideration of potential impacts to the property value of adjacent or area real estate holdings during the review of an application. The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. Accordingly, the TCEQ does not have jurisdiction to consider

property values when determining whether to approve or deny a permit application. The Executive Director's review of a permit application considers whether the proposed facility meets the requirements of Chapter 330 of the Commission's rules. Please note that 30 TAC Section 305.122(c) of the TCEQ's rules provides that the issuance of a permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of state or local law or regulation.

COMMENT 8: Comments received suggested that the proposed expansion of the landfill will result in a loss of native trees and growth causing displacement of animals, and causing risk of flooding in this flood plain. (Donna McCandless, Joe Pinzon, Senator Gallegos, Jr., Dan Doherty, Weingarten)

RESPONSE 8: Since the permit amendment application for the McCarty Road Landfill facility only proposes a vertical expansion of the landfill unit, and no lateral expansion, there would be no increase in the size of the landfill waste footprint, and no further clearing of existing trees or native growth surrounding the unit. Therefore, the potential impacts listed in the comment above concerning the loss of native trees, growth, or animals would not be applicable for this proposed permit amendment. The permit amendment application addresses the risk of flooding through the proposal to use eight detention ponds to control stormwater collected in the perimeter channels. Stormwater run-off from this landfill will discharge into the Harris County Flood Control District (HCFCD) ditches and Greens Bayou. As indicated in Attachment 6 of this application, the flow rates and volumes of the stormwater run-off from this landfill will not significantly increase from the currently permitted conditions. Please refer to Response to Comment Number 23 for more information on the drainage measures proposed for this landfill.

COMMENT 9: Comments suggested that continued operation of the landfill will lead to the death of domesticated animals due to air, water, and ground contamination. (Joe Pinzon, Senator Gallegos, Jr., Dan Doherty)

RESPONSE 9: While the Municipal Solid Waste Rules do not specifically address health concerns as they relate to domesticated animals, the Executive Director has determined that this proposed permit is protective of human health and the environment. Furthermore, as described in Response Number 6 above, 30 TAC § 330.58(b)(8) requires that the Commission consider the impact of a site upon a city, community, group of property owners, or individuals in terms of compatibility of land use, zoning, community growth patterns, and other factors associated with the public interest. In fashioning the proposed permit, the TCEQ professional staff considered the presence of residential makeup of the community and included appropriate safeguards, consistent with applicable law and regulations.

Finally, aside from the landfill operations regulated under this proposed permit amendment, persons are prohibited, under 30 TAC Section 101.4, from discharging any air contaminant in such a concentration which may adversely affect animal life, or interfere with the normal use and enjoyment of animal life, so as to cause a condition of nuisance. As indicated above, individuals are encouraged to report any concerns about nuisance issues or suspected noncompliance with terms of any permit or other environmental regulation by contacting the TCEQ Houston Regional Office at (713) 767-3500, or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. If the facility is found to be out of compliance with the terms and conditions of the permit, it will be subject to possible enforcement action.

COMMENT 10: Comments indicated a concern regarding past leaching of chemical residue onto soil and water onto landfill property, and contaminated standing water in nearby areas. (Bernice Cranford, HCPHES, Mark Sweeney, Weingarten, NEEJA, Martina Cartwright)

RESPONSE 10: The applicant will be required to implement the requirements contained in Attachments 6 and 15 to collect, store, and dispose of the landfill leachate and contaminated water. Contaminated water defined in the TCEQ Municipal Solid Waste Rules is water which has come into contact with waste, leachate, or gas condensate. The leachate and gas condensate will be either transported offsite for treatment at properly authorized treatment facilities, or recirculated into the landfill over areas underlain by Subtitle D composite liner and leachate collection systems in accordance with 30 TAC Section 330.56(o)(2). Contaminated water generated onsite will be pumped to a City of Houston sewer line or transported via tanker trucks to properly permitted offsite facility for treatment. Discharge of leachate, gas condensate, and contaminated water through surface drainage systems is prohibited. Section 4.19 of Part IV of the permit amendment application contains the procedures by which the landfill staff will address ponded water issues. Weekly inspections will be performed to detect the presence of ponding of water over areas where waste disposal has taken place. Ponded water will be removed as quickly as practicable, and contaminated water will be handled in accordance with the Leachate and Contaminated Water Plan (Attachment 15 of the permit amendment application).

COMMENT 11: Comments received indicated that citizen complaints presented to Harris County and the City of Houston resulted in unsatisfactory responses. (Bernice Cranford, Robin Germain Curtis)

RESPONSE 11: Citizen complaints can also be directed by correspondence to the TCEQ Region 12 Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, or by telephone at (713) 767-3500. Citizen complaints will be taken and recorded in Complaint Reports, assigned an Incident Number, and addressed through compliance investigations documented in a TCEQ Investigation Report, a copy of which will be forwarded to the complainant. The Investigation Report will include the specific complaint brought forth, a description of the

investigation performed, the investigation findings, and any actions to be taken by region staff in response to the complaint.

COMMENT 12: Comments received indicated that the City of Houston will realize a positive economic value as a result of the issuance of the proposed permit amendment. (Nicole R. Bates, Buck Buchanan, Ernest McGowan)

RESPONSE 12: Similarly to Response 7 above, the Municipal Solid Waste Rules do not address the consideration of potential economic impacts to local government entities in the review of the siting and land use compatibility of landfill units.

COMMENT 13: Comments received indicated that, according to state inspectors, BFI has conducted water well testing to ensure that the landfill is run right. (McGowan)

RESPONSE 13: The applicant has installed a certified ground-water monitoring system and sampling schedule as required by 30 TAC Sections 330.230 - 330.234. In addition, corrective measures have been taken to comply with the requirements of 30 TAC Sections 330.235 - 330.238 to address the current ground-water impacts by volatile organic compounds (VOCs). Depending on the type of ground-water sampling involved, ground-water samples are taken quarterly, semi-annually, or annually to document the quality of the groundwater, and presence of VOCs, in the uppermost aquifer beneath the McCarty Road Landfill site.

COMMENT 14: Commenters suggest that due to the landfill operations, the quality of water in the area is not at a safe drinking level, and that water contamination may impact the health and safety of local residents, employees, and other persons. (Weingarten, Donna McCandless, Joe Pinzon, Bernice Cranford, Lois Richards, Tommy Black, Robin Germain Curtis, Mark Sweeney, HCPHES, NEEJA, Martina Cartwright)

RESPONSE 14: As described in Response 27 below, the applicant has initiated corrective measures to address the presence of contaminated groundwater in order to comply with state rules 30 TAC Sections 330.235 - 330.238. A ground-water recovery trench and extraction wells have been installed to draw ground-water flow away from potential surface discharge points such as Greens Bayou, keeping contaminated groundwater in the proximity of the facility for remediation. The applicant has implemented the remediation work through a Corrective Action Implementation and Effectiveness Work Plan, which was approved by the TCEQ on September 8, 2004. The January 31, 2005 and February 14, 2006 Annual Corrective Action Reports concluded that the impacts to the uppermost aquifer by VOCs had been greatly reduced in lateral extent and concentration, and that the Enhanced Bioremediation Program would accelerate the degradation of the remaining constituents of concern.

Furthermore, the Executive Director has determined that the ground-water monitoring system and sampling schedule, as described in Response to Comment Number 13, above, will adequately ensure the protection of human health and the environment.

COMMENT 15: Commenters expressed concern about the presence of litter and debris on public roads and right of ways. One commenter suggested that Part 4 of the SOP should be revised to comply with best management practices to address the issue of windblown debris. (NEEJA, Martina Cartwright, Weingarten, HCPHES)

RESPONSE 15: Section 4.8 of the SOP, as revised, requires the daily cleanup of spilled solid waste materials along all access roads within a distance of two miles in either direction from both site entrances, which includes U.S. 90, Oates Road, Mesa Drive, Ley Road, and John Ralston Road. This frequency will be increased if the Landfill Manager deems necessary.

COMMENT 16: Comments received indicated that the landfill site has inadequate soil to meet facility requirements. (Mark Sweeney)

RESPONSE 16: The McCarty Road Landfill facility currently has a soil borrow area just east of the proposed new site entrance of Mesa Drive, at the extreme western portion of the facility. If the present soil borrow source should not be sufficient to provide the soil needed during the remaining site life of the facility, the applicant is not precluded by permit provision or state rule from having soil brought in from offsite sources to meet the future construction needs of the facility. The number of trucks that would be needed to provide this soil would be a very small percentage of the normal traffic flow to, from, and near the site.

For quite some time, the McCarty Road Landfill has had the liners for all proposed disposal cells constructed and covered with waste. Therefore, future soil stockpiles would mainly be needed for use as daily cover, fill, fire suppression stock, and to complete the final cover system prior to closure of the facility. There are no state rules, or proposed permit provisions, requiring a specific amount of soil to be available at the site for use in soil liner and final cover construction, the application of daily cover, or other uses. Requirements for the suitability of all soil material used at the site, regardless of source, are specifically addressed and defined in Attachment 4 (Geology and Geotechnical Report), Attachment 10 (Soils and Liner Quality Control Plan), Attachment 12 (Final Closure Plan), Appendix 12A (Final Cover System Quality Control Plan), and Part IV (Site Operating Plan) of the permit amendment application.

COMMENT 17: Comments received suggest that the permit amendment does not present adequate slope stability analysis. The comments indicate that there is no power metric sensitivity analysis,

and there is a failure in not considering potential problems associated with the site being adjacent to Greens Bayou. (Martina Cartwright, HCPHES, NEEJA)

Related comments indicate that there is inadequate soil and liner site-specific test information to assure proper stability analyses. "Please justify the parameters selected. Please justify the critical failure surfaces presented. It is impossible to know the soil strength parameters in areas without quality control at the waste-soil interface. Please justify your selections." (M. Sweeney)

RESPONSE 17: Attachment 4, Section 3.4 of this permit amendment application described the stability analysis performed for the interim and final cover. Section 3.4.1 states that XSTABLE 5.2, a computer program developed to model general slope stability by the Simplified Bishop and Rankine Block method, was used for the stability analysis. TCEQ MSW Rules or its guidelines do not specify the methods that have to be used for this type of analysis. Section 3.4.5 states that the proposed interim and final cover slopes are stable with a safety factor of 1.63 under the conditions analyzed. The safety factor of 1.63 was determined following the Corps of Engineers' manual and the EPA's technical guidance, and is higher than the safety factor recommended for long-term slope stability. The applicant will be required to implement the applicable requirements contained in Attachments 6, 12, 13, and Part IV of the permit amendment application for the slope construction and maintenance during the post-closure care period.

COMMENT 18: Comments received indicate that the permit amendment lacks a Risk Assessment which quantifies the risk(s) associated with a catastrophic event. (Martina Cartwright, NEEJA, Weingartner)

RESPONSE 18: The Municipal Solid Waste Rules do not address the requirement for a consideration of a Risk Assessment of potential catastrophic event scenarios during the review of an application. That being said, Section 7 of the SOP, as revised, contains a Fire Protection Plan which contains detailed methods/procedures for preventing or fighting various types of fires (vehicle, structure, equipment, working face, etc.) that could arise at the facility. Smoking is not allowed in any area proximal to flammable materials. Additionally, there is Safety Training which is required of facility personnel in order to promote safe site operating conditions. The training includes, among other topics, lectures on anticipating hazards, fire safety, and emergency response.

COMMENT 19: Comments received indicate that the landfill facility fails to have a holding pond. (Tommy Black)

RESPONSE 19: In responding to this comment, it is assumed that the commenter was referring to the detention pond used for surface run-off control. This permit amendment

application proposes to use eight detention ponds to control the onsite stormwater run-off collected in the perimeter channels. Please refer to Response to Comment Number 24, below, for more information on surface run-off control.

COMMENT 20: "There's no testing beyond the parameters of the neighborhood. What should happen if you're a good neighbor, there should be preventive measures to keep the community from having to react." (Frank Watson)

RESPONSE 20: Monitoring requirements contained in the draft permit are designed to prevent negative effects upon human health and the environment. Specifically, the permit terms and conditions are crafted to address any impacts upon persons and property outside the facility site, irrespective of the distance a person or property may be situated from the landfill.

Regarding preventative measures, please see Response to Comment Number 18, above, which concerns permit terms and conditions intended to prevent negative consequences of landfill operations.

COMMENT 21: "The Green Bayou watershed has been revised by HCFCD. Construction permits may no longer be issued under the prior watershed parameters. The hydrology study no longer complies with local requirements. Please explain how a permit will be issued?" (M. Sweeney)

RESPONSE 21: The facility applied for a permit modification in 2003, and received approval in 2004, for improvements on the perimeter drainage systems that were built in accordance with the drainage system outlet design approved in 1987 by the HCFCD. The revisions proposed by the HCFCD to the Greens Bayou watershed parameters are presently in draft form, are yet to be implemented, and are therefore not in effect. This permit amendment application is for a landfill facility that was constructed in accordance to HCFCD requirements existing at that time.

COMMENT 22: One commenter questions the source of the cover material soils, and further questions whether the traffic study accounts for trucks transporting soil to the facility? (M. Sweeney)

RESPONSE 22: Please refer to Response to Comment Number 16, above.

COMMENT 23: Comments received suggest an anticipation of a significant increase in stormwater runoff from the site, should the permit amendment be issued. (NEEJA, Martina Cartwright)

The Landfill's vertical expansion will dramatically impact runoff that could directly impact Weingarten. McCarty Road Landfill has filed a Notice of Intent with TCEQ to discharge stormwater runoff pursuant to a TPDES Multi-Sector permit, and the discharge of that stormwater could affect neighboring property interests and the health and safety of residents, employees and others. (Weingarten)

RESPONSE 23: Review of the drainage systems for this permit amendment was based on the information provided in the application and in accordance with the applicable requirements contained in 30 TAC Chapter 330. Per Attachment 6 of the permit amendment application, onsite runoff will be collected in the perimeter channels, then conveyed to eight detention ponds, then discharged into the Harris County Flood Control District (HCFCD) ditches on the north (P116-00-00) and the south (P114-00-00) and the Greens Bayou on the east. This permit amendment proposes to use eight detention ponds to control surface discharge. Table 6-2 of this permit amendment application indicates that the discharge rates into the HCFCD ditches on the north and the south and the Greens Bayou on the east are the same or less than the currently permitted rates. The same table also indicates that the run-off volumes increase by two percent at the north ditch (P116-00-00), six-tenth of one percent at the south ditch (P114-00-00), and decrease by six percent at the Greens Bayou on the east. In comparison to the existing permitted conditions, the estimated surface run-off rates and volumes proposed by this permit amendment do not represent significant increases. The facility applied for a permit modification in 2003 and received approval in 2004 for improvements on the perimeter drainage systems that were built in accordance with the drainage system outlet design approved in 1987 by the HCFCD.

This landfill is prohibited from discharging any contaminated water offsite through the surface drainage system. The contaminated water generated onsite will be collected and transported offsite for treatment at properly authorized treatment facilities. This permit amendment application does not propose any offsite discharge points for the stormwater run-off other than those discharging into the HCFCD ditches and Greens Bayou.

COMMENT 24: Comments received suggest an anticipation of an exacerbation of existing ground-water contamination, should the permit amendment be issued. (NEEJA, Martina Cartwright, Bernice Cranford)

RESPONSE 24: The applicant has installed a certified ground-water monitoring system in accordance with 30 TAC Sections 330.230 - 330.234. In addition, corrective action/remediation measures have been initiated to address the ground-water contamination at the site, and are described in Response 27. As described in Response 14, above, the applicant has acted in response to the requirements of 30 TAC Sections 330.235 - 330.238 to prevent any movement of ground-water contamination beyond the proximity of the facility, and is addressing VOC contamination between the slurry walls and Greens Bayou through the Enhanced Bioremediation Program.

COMMENT 25: The landfill is currently polluting the groundwater as evidenced by the Corrective Measures Assessment. Even if remediation activity is beginning to "Clean-up" groundwater, capping of the non-Subtitle (D) areas must begin immediately. Please explain why placing an additional 35 million compacted cubic yards of MSW on this landfill will not provide additional infiltration resulting in continued polluting, in contravention of Draft Permit Condition IIIB. (Mark Sweeney)

RESPONSE 25: See Responses to Comment Numbers 26 and 28, below.

COMMENT 26: "The dramatic vertical expansion would serve to exacerbate those existing ground-water problems." (Weingarten)

"Please explain how TCEQ is protecting the environment by allowing the proponent to vertically expand over a non-Subtitle D area with ground-water problems." (M. Sweeney)

RESPONSE 26: The applicant has complied with the requirements of the Municipal Solid Waste Rules by implementing a ground-water corrective action program to address the impacts to site groundwater from the release of volatile organic compounds. Through the installation of two ground-water recovery well networks, a ground-water recovery trench, a ground-water treatment plant, two slurry walls, and three sumps, the applicant has redirected the flow of contaminated groundwater toward access points for extraction and remediation, thereby reducing the lateral extent of VOC-impacted groundwater and its opportunity for offsite migration toward Greens Bayou. The applicant has also initiated an Enhanced Bioremediation Program that will utilize the injection of a calcium-peroxide slurry to promote greater bioactivity in the degradation of the VOCs present in the upper water-bearing zone outside the slurry walls toward Greens Bayou.

COMMENT 27: "Please explain where the unfiltered ground-water test results are in the amendment. The owner must have been testing unfiltered ground-water samples since at least the Corrective Measures Assessment as TCEQ has no authority to issue a filter variance on 'assessment constituents,'" per Appendix II to 40 Code of Federal Regulation, Part 258. (M. Sweeney)

RESPONSE 27: Field filtering is not allowed in the Ground-water Sampling and Analysis Plan that is contained within Attachment 11 of the permit amendment application, and which is incorporated by reference as a part of proposed Municipal Solid Waste Permit No. 261B.

COMMENT 28: "Please explain how the presented equipment dedicated to the McCarty Road Landfill will be capable of handling 6,000 tons of waste per day in an environmentally sound manner." (M. Sweeney)

RESPONSE 28: Section 3 (Equipment) of the Site Operating Plan, as revised, contains Table 3.1 which provides a matrix for determining the minimum number of equipment pieces needed for specific functions, dependent upon the rate of acceptance of incoming waste at the time. The proposed minimum number of pieces for each of the identified waste rate ranges was determined by Staff to be reasonable and consistent with the practices of other facilities across the state. The applicant also commits to provide sufficient quantity and quality of equipment at the site to conduct operations within the facility design requirements, and in accordance with the permit. Other area sites operated by the applicant company are available to provide the McCarty Road Landfill facility with additional/replacement equipment when needed.

COMMENT 29: "The current gas collection and control system is inadequate to control migration of landfill gas. Seven existing gas probes have shown methane levels above the regulatory limit. Please explain why all extraction wells are not being replaced as part of this amendment so that well perforations run the entire thickness of the waste. Also, please explain how placing up to 128 feet of additional waste on the landfill will not negatively impact gas extraction. In addition, please explain how much ground-water pollution is occurring because of methane migration particularly from "light organic compounds". Another commenter is concerned whether "McCarty Road maintains sufficient gas monitoring and remediation plans to protect Weingarten from explosive or other gases." (M. Sweeney, Weingarten, NEEJA, Martina Cartwright)

RESPONSE 29: The current permit with its attached documents requires the landfill to implement gas monitoring and remediation procedures for the exceedance of the regulatory limit for detected landfill gas concentrations. Significant changes to the existing gas monitoring and collection system are the subject of a separate permit modification application, currently pending before the TCEQ. On October 28, 2005, the facility applied for a permit modification to revise the current Landfill Gas Management Plan and update the Landfill Gas Remediation Plan. The modification application was declared technically complete on December 29, 2005, and has undergone the public notice process. The proposed revisions reflect the ongoing expansion of the facility's landfill gas collection and control system. A final determination on the proposed permit modification is presently pending.

Attachment 14 Section 6.2 of the permit amendment application states "(a)s the site develops, additional extraction wells will be installed as needed to reduce the buildup of internal gas pressures caused by the increased generation of landfill gas (LFG). The locations and details of the anticipated proposed extraction wells for the currently permitted facility are shown in Drawing 14F-1." Section 6.3 proposes additional extraction wells for the vertical expansion proposed by this permit amendment. These additional extraction wells will be connected to the existing Gas Collection and Control System (GCCS), which discharges to the landfill gas recovery facility or to the flare facility for control. According to Sections 6.2 and 6.4 of the proposed permit amendment, future gas control capacity is designed with assistance of the EPA Landfill Gas Emissions Model. Each extraction well will be equipped with control valve and monitoring ports, to be used in conjunction with controls on the blowers, to allow the site

to regulate the vacuum and LFG levels at each individual extraction well. The existing blowers not only provide vacuum to the extraction wells but also the leachate risers through the leachate collection piping network.

In accordance with the MSW Rules (30 TAC Chapter 330), the landfill is required to implement the landfill gas monitoring procedures as contained in Attachment 14 of this permit amendment application. The existing and new landfill gas probes will be installed on the site perimeter to monitor methane concentrations. If methane is detected at or greater than the Lower Explosive Limit, the facility shall implement the procedures described in Attachment 14 to respond to and remediate the landfill gas migration issue.

COMMENT 30: Commenters expressed concern over the nature of the cover and liner. Respecting the height increase, "We are concerned about the impacts on the pre-Subtitle D liner systems; and whether positive final cover slopes can be maintained over the 30-year initial post closure period... Only about 20% of the current footprint is subject to the more protective Subtitle D requirement.... For the remainder of the footprint, the proposed vertical expansion would fall under less protective pre-Subtitle D standards. Thus, our concerns are that as waste subsides over a number of years, it may affect the integrity of the pre-Subtitle D clay liner." (HCPHES, Weingarten)

RESPONSE 30: The pre-Subtitle D lined areas at the McCarty Road Landfill facility, comprising approximately 335 acres of the total waste fill footprint, were constructed in one of two ways - as either an "in-situ clay liner", or as an excavated and recompacted clay liner. The in-situ liner was constructed by excavating into the surficial Beaumont Clay Formation, with an additional 3-foot thick cap being placed over any areas exhibiting signs of granular material. The recompacted liner involved the excavation of the surficial clay material, and placement of at least 3 feet of recompacted clay with a coefficient of permeability of no more than 1×10^{-7} cm/sec. The area of the waste fill footprint that utilizes a Subtitle D liner system is approximately 53 acres, which was constructed using a 2-foot thick compacted clay liner, a 60-mil geomembrane liner, a leachate collection system, and a minimum thickness of 1 foot of protective cover. All of these liners were constructed in accordance with the requirements of the MSW Rules that were effective at the time of placement. The Executive Director has determined that the terms and conditions of the draft permit, specifically as they relate to the liners in place at this facility, are adequately protective of human health and the environment.

Attachment 6, Appendix 6A-D of this application, contains the final cover erosion layer design, including a thickness determination, soil loss estimates, and surface vegetation measures. Per page 6A-D-1, the design was conducted following the Universal Soil Loss Equation, a method recommended by the EPA and the TCEQ. Attachment 6, Appendix 6A-C, contains designs for drainage swale and drainage letdown, which will be constructed as erosion control measures over the final cover. Attachment 13, Section 2, contains monitoring and maintenance procedures for managing the final cover system. The applicant will be required to implement the requirements regarding final cover design and post-closure care as specified in this

application to ensure lasting durability of the final cover over the required post-closure care period. Please refer to Response 18 for information regarding the final cover slope stability.

As described above, the ground-water monitoring system, which collects data from the entirety of the landfill footprint, is designed to provide for early detection of potential releases from the facility. The ground-water monitoring network will be sampled, analyzed, and monitored in accordance with the procedures in the Ground-water Sampling and Analysis Plan (Attachment 11 of the permit amendment application), which is part of the facility permit. Individuals are encouraged to report any concerns about nuisance issues or suspected noncompliance with terms of any permit or other environmental regulation by contacting the TCEQ Houston Regional Office at (713) 767-3500, or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. If the facility is found to be out of compliance with the terms and conditions of the facility permit, it will be subject to possible enforcement action.

COMMENT 31: "The permit provision concludes that the estimated life of the site is approximately 10.9 years. However, more waste can be filled as there is subsidence over the years and as more volume is created. To that extent, we would like assurances that all of the worst case scenarios have been considered, and this application over a maximum life span of the permit and the initial 30-year post-closure (care) period, will be protective of the environment, and public health and safety." (HCPHES)

RESPONSE 31: Appendix IIIA of Part III of the application contains detailed calculations used in determining the approximate 10.9-year site life of the McCarty Road Landfill facility, which is contingent on the authorization of the proposed permit amendment application. The projected site life for a facility is just an approximation of the life span of the landfill, and the actual site life can vary from the projected figure due to future assumptions that are made for service area population growth, waste acceptance rates, density of emplaced waste, waste settlement, and other factors that can affect the site life calculations. Inputs into the calculations were conservative and reasonable, and the McCarty Road Landfill facility will be protective of human health and the environment for the projected site life if operated, closed, and maintained in accordance with the facility permit, as proposed, and the MSW Rules.

COMMENT 32: The applicant has failed to adequately identify the maximum area of the unloading area and establish that the working faces are confined to as small areas as practicable, pursuant to relevant rules. (HCPHES)

RESPONSE 32: Section 4.2.4 (Maximum Size of Unloading Areas) of the SOP, as revised, includes a matrix that specifies the maximum working face or unloading area sizes, dependent upon the rate of acceptance of incoming waste at the facility at any point in time. This section stipulates that controls will be used to confine the working face(s) to as small an area as

practicable dependent upon the rate of incoming waste, and safe and efficient working face operations.

COMMENT 33: The applicant has had issues of compliance which are brought to the attention of the TCEQ. Specifically, the Harris County Pollution Control issued 13 nuisance violations between September, 2000 and December, 2004. The City of Houston received odor complaints and issued several notices of violation for unidentified violations. The commenter requests that the permit and SOP include more enforceable terms, with specific emphasis on odor as a problem. Additionally, with respect to compliance history, Weingarten has reason to believe that BFI's compliance history warrants denial of the amendment application. (HCPHES, Weingarten)

RESPONSE 33: The terms and conditions of the proposed permit, pertaining to nuisance concerns, are discussed in detail in responses above, including Response to Comment Number 1. The various means for controlling odors and preventing conditions of nuisance have been developed based upon discussions between the applicant, the Agency, and interested parties, consistent with the concerns raised by commenters and applicable MSW rules.

During the technical review, a compliance history review of the company and the site is conducted based on the criteria in Title 30, Chapter 60 of the Texas Administrative Code. These rules may be found at the following website: <http://www.tceq.state.tx.us/rules/index.html>. The compliance history for the company and site is reviewed for the five-year period prior to the date the permit application was received by the Executive Director. The compliance history was prepared on October 20, 2004 that compiled the applicant's compliance with the TCEQ Municipal Solid Waste Rules and the facility permit for the period March 25, 1999 - October 20, 2004. The compliance history includes multimedia compliance-related components about the site under review. These components include the following: enforcement orders, consent decrees, court judgments, criminal convictions, chronic excessive emissions events, investigations, notices of violations, audits and violations disclosed under the Audit Act, environmental management systems, voluntary onsite compliance assessments, voluntary pollution reduction programs and early compliance.

This permit application was received after September 1, 2002, and the company and site have been rated and classified pursuant to Title 30, Chapter 60 of the Texas Administrative Code. A company and site may have one of the following classifications and ratings:

High: rating < 0.10 (above-average compliance record)

Average by Default: rating = 3.01 (these are for sites which have never been investigated)

Average: $0.10 < \text{rating} < 45$ (generally complies with environmental regulations)

Poor: $45 < \text{rating}$ (performs below average)

This site has a rating of .51 and a classification of average. The applicant and its related entities (McCarty Road Landfill TX, LP, BFI Waste Services of Texas, LP, BFI Waste Systems of North America, Inc.) rating and classification, which is the average of the ratings for all sites the company owns, is 4.05 and a classification of average. Because the application has been pending for two years, a compliance history reflecting the 1999 through 2006 time period was reviewed. The ratings and classifications remain unchanged.

COMMENT 34: The property and business interests "located immediately adjacent to McCarty Road could very well suffer business, economic and environmental problems directly because of the Proposed Permit No. 261B." (Weingarten)

RESPONSE 34: The Municipal Solid Waste Rules do not address the consideration of potential negative impacts to residential and business property values during the review of an application, but do function to ensure that permittees are protective of human health and the environment during the lifetime of their facilities. Municipal Solid Waste Rule 30 TAC Section 330.3(d) states that all municipal solid waste landfill units and municipal solid waste sites that receive waste on or after October 9, 1993 must comply with all requirements of the Texas municipal solid waste regulations, unless otherwise specified. The facility must also comply with all of the requirements of the facility permit, and is subject to periodic inspections by the applicable TCEQ regional office. If a permittee fails to comply with any of these requirements, a formal enforcement action could result with such repercussions as notices of violation, fines, and/or revocation of the permit, depending upon the severity and duration of the noncompliance.

COMMENT 35: If the permit amendment is granted, McCarty Road will move the entrance from its current facility access road to Mesa Drive. This will cause ever-increasing traffic of garbage trucks in the community, negatively impacting residential and business interests. (Weingarten)

RESPONSE 35: As referred to previously in Responses to Comment Numbers 7 and 34, above, the Municipal Solid Waste Rules do not address the consideration of potential negative impacts to residential and business property values during the review of an application.

The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. Accordingly, the TCEQ does not have jurisdiction to consider additional traffic when determining whether to approve or deny a permit application. However, the Texas Department of Transportation was consulted on this application, and stated in a September 22, 2004 letter to the TCEQ that "(t)he highways in the area, US 80, Oates Road, Mesa Drive, and Loop 610, are adequately designed to accommodate the additional traffic that may be generated by the proposed expansion of the landfill."

Should additional traffic result in air emissions, nuisance-related regulatory provisions may be triggered. Title 30, TAC Section 101.4 prohibits a person from creating or maintaining a condition of nuisance that interferes with a landowner's use and enjoyment of his property. The scope of the Agency's regulatory jurisdiction does not affect or limit the ability of a landowner to seek relief from a court in response to activities that interfere with the landowner's use and enjoyment of his property.

COMMENT 36: One commenter is concerned "whether McCarty Road maintains sufficient training, documentation and notification procedures to be certain prohibited wastes are excluded." (Weingarten)

RESPONSE 36: Section 6 of Part IV (Site Operating Plan) of the permit amendment application addresses the methods for the detection and prevention of the disposal of unauthorized wastes at the McCarty Road Landfill facility. Through control of site access, prescribed procedures for inspection of incoming waste loads, specific required training of facility personnel on load screening techniques, and load inspection reporting and recordkeeping requirements, the facility has adequate procedures in place to meet the requirements of 30 TAC Section 330.117(c) to ensure that prohibited wastes are not unloaded at the facility for disposal.

COMMENT 37: One commenter is concerned "whether leachate or gas condensate will be correctly managed" to ensure the protection of the area residents and business owners and employees. (Weingarten)

RESPONSE 37: The applicant will be required to implement at the landfill the requirements contained in the permit and its attached documents, i.e. Attachments 6 and 15 of the pending permit amendment application, to collect, store, and dispose of the leachate, gas condensate, and contaminated water. The leachate and gas condensate generated onsite will be either transported offsite for treatment at properly authorized treatment facilities or re-circulated into the landfill. Contaminated water generated onsite will be pumped to a City of Houston sewer line or transported via tanker trucks to properly permitted offsite facility for treatment. Discharge of leachate, gas condensate, and contaminated water through surface drainage systems is prohibited.

COMMENT 38: One commenter is concerned "whether the closure and post-closure care plans will adequately protect Weingarten after the Landfill has closed. This includes whether monitoring, testing, ground-water remediation, or other closure and post-closure matters are sufficient to protect Weingarten." This also includes whether the cost estimates and financial assurance are sufficient to adequately protect neighboring interests during closure and post-closure. (Weingarten)

RESPONSE 38: After technical review of the application, the applicant was found to have satisfactorily addressed the requirements of 30 TAC Sections 330.250 - 330.256 in Attachments 12 and 13 (Final Closure Plan and Post-closure Care Plan) of Part III of the application document. These sections provide detailed information on such topics as the cover system design, the cover installation methods and procedures, the final closure schedule, the contents of the Final Cover Quality Control Plan, the post-closure activities for monitoring and maintenance, the requirements for decreasing and increasing the length of the post-closure period, and constraints on post-closure construction over the landfill "footprint" area. Ground-water monitoring, testing, and remediation requirements are found in the approved April 23, 2004 facility Corrective Action and Implementation Effectiveness Monitoring Work Plan and Addendum. The applicant proposed closure and post-closure financial assurance amounts of \$11,749,459 and \$13,636,800 in 2004 dollars, respectively, in the initial July 29, 2004 permit amendment application. TCEQ staff reviewed Attachments 12 and 13, and asked the applicant to revise these figures upward to \$15,169,234 and \$14,385,600, respectively, to ensure that adequate funding is provided to properly close the facility in full compliance with the Municipal Solid Waste Rules and the facility permit.

COMMENT 39: One commenter is concerned "whether Weingarten (McCarty) maintains sufficient training, documentation and notification procedures to protect Weingarten regarding any special waste McCarty Road might accept." (Weingarten)

RESPONSE 39: Similar to Response to Comment Number 36, above, the applicant has included Section 4.20 (Disposal of Special Wastes) in the SOP to establish standards of operation at the facility to effectively screen and accept special wastes in accordance with 30 TAC Section 330.136. Review of this section of the application found the content adequate to meet the requirements of the applicable MSW Rules, and provides specific guidelines for facility staff concerning training, documentation, and notification procedures regarding special waste. The applicant will also staff a Special Waste Department which will review pre-authorized requests for special waste disposal at the site. A Special Waste Liaison / Compliance Coordinator will work with the Special Waste Department to provide oversight of facility staff to ensure that the acceptance of special wastes is in full compliance with the Municipal Solid Waste Rules, the facility permit, and the Special Waste Section (4.20) of the SOP.

COMMENT 40: One commenter is concerned "whether the functions and minimum qualifications for each category of key personnel to be employed at McCarty Road will be sufficient" to ensure proper standards of safety and protection. (Weingarten)

RESPONSE 40: Section 2 of Part IV (Site Operating Plan) of the permit amendment application contains guidelines for the minimum qualifications of key facility personnel, and the training that each should receive, to maintain competency for the position held. After technical review, this portion of the SOP was found adequate to address the requirements of

30 TAC Section 330.114. The SOP requires that both the Landfill Manager and Shift Supervisor must hold a Class A Letter of Competency, and must receive training on a regular basis to maintain facility knowledge of daily operating procedures, the Site Development Plan, the Site Operating Plan, the facility permit, routine site inspection procedures, and applicable TCEQ regulations.

COMMENT 41: One commenter is concerned “whether the procedures for the detection and prevention of the disposal of prohibited wastes, including regulated hazardous wastes, PCBs and others” are adequate to ensure proper standards of safety and protection. (Weingarten)

RESPONSE 41: Please See Response to Comment Number 36, above.

COMMENT 42: One commenter is concerned whether McCarty Road will maintain protections against fire in the expanded or existing area sufficient to protect Weingarten Realty.” (Weingarten)

RESPONSE 42: The applicant has included in the permit amendment application a section (Section 7 of Part IV, “Fire Protection Plan”) that contains requirements for facility fire protection training, fire protection standards (posted fire protection information, fire safety rules, identification and exclusion of “hot loads”), prohibition of open burning and smoking onsite, preventive procedures (use of fire extinguishers and maintaining soil stockpiles), methods for extinguishing vehicle, structure, equipment, and working face fires, and emergency personnel contact. This portion of the application has been found adequate in addressing the requirement of 30 TAC Section 330.114(6) for a facility fire protection plan.

COMMENT 43: One commenter is concerned whether McCarty Road’s operations might violate any applicable requirement of (the) Federal Clean Air Act, any approved s(t)ate implementation plan developed under the Federal Clean Air Act, or any applicable provisions of the Texas Clean Air Act. (Weingarten)

RESPONSE 43: In accordance with 30 TAC Chapter 330 of the TCEQ Municipal Solid Waste Rules, the landfill will be required to implement the landfill gas monitoring and remediation requirements contained in Attachment 14 of this permit amendment application, as described more fully in Responses to Comment Numbers 10, 27, and 39, above.

This is a municipal solid waste permit amendment application and air quality is largely, but not entirely, outside the scope of this review. Should the nature of the facility’s operations require, the applicant may be required to apply for separate permits which regulate air quality.

COMMENT 44: One commenter is concerned whether operation of the McCarty Road Landfill will result in destruction or adverse modification of the critical habitat of endangered or threatened species, or cause or contribute to the taking of any endangered or threatened species. (Weingarten)

RESPONSE 44: Under Section 330.53(b)(13)(B) of the Commission's rules, the TCEQ must consider the impact of a solid waste disposal facility upon endangered or threatened species. In addition, the facility and the operation of the facility may not result in the destruction or adverse modification of the critical habitat of an endangered or threatened species, or cause or contribute to the taking of any endangered or threatened species. According to sections 330.51(b)(8), 330.53(b)(13), and 330.302 of the TCEQ's MSW Rules, the applicant must demonstrate compliance with the Endangered Species Act under state and federal laws. The information submitted in the application was determined by the Executive Director to meet the requirements in the TCEQ's MSW Rules. Correspondence with the United States Fish and Wildlife Service (April 24, 2003) and the Texas Parks and Wildlife Department (August 29, 2003) indicate that no to minimal impacts to threatened or endangered species of plants or animals are expected from the proposed vertical expansion of this facility.

COMMENT 45: One commenter is concerned "whether McCarty Road's operations will cause, suffer, allow, or permit the collection, storage, transportation, processing, or disposal of municipal solid waste in such a manner" as to cause unauthorized discharges, nuisances, or threats to human health and welfare or the environment. (Weingarten)

RESPONSE 45: The intent of the TCEQ Municipal Solid Waste Rules and the facility permit is to stipulate what a permittee must do to properly construct, operate, and close a landfill facility in order to protect human health and the environment by preventing unauthorized discharges, nuisances, or other negative impacts. If the permittee does not adhere to these requirements, or is found in violation of any rule or permit condition during routine inspections by TCEQ regional staff, a formal enforcement action could result with such repercussions as notices of violation, fines, and/or revocation of the permit, depending upon the severity and duration of the noncompliance.

As indicated above, individuals are encouraged to report any concerns about nuisance issues or suspected noncompliance with terms of any permit or other environmental regulation by contacting the TCEQ Houston Regional Office at (713) 767-3500, or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. If the facility is found to be out of compliance with the terms and conditions of the permit, it will be subject to possible enforcement action.

COMMENT 46: One commenter recommends that the language in Section VII(H) of the permit "be revised to correctly reflect the daily cover requirements in 30 TAC Section 330.133(a) for facilities operating on a 24-hour basis. During the Public Hearing for the current permit held on

September 3, 1985, the Applicant agreed to define daily cover as '(a)n intermediate cover of six inches of earthen material shall be applied to the working face at least every twenty-four hours in such a manner that no solid waste at the site remains exposed longer than twenty-four hours.' However, because of odor problems in the past, we also ask that daily cover be applied every 12 hours." (HCPHES)

RESPONSE 46: Please see Response to Comment Number 1, above.

COMMENT 47: One commenter stated that "Special waste, by definition, requires special handling and disposal to protect human health and the environment and if improperly disposed, it may pose a present or potential and industrial wastes to an area with Subtitle D protections would mean that the likelihood of ground-water contamination from special and industrial wastes would be considerably lessened." (HCPHES)

RESPONSE 47: The method for the disposal of special wastes described in this comment is neither required nor addressed through applicable MSW Rules. Should the applicant so choose, it may adopt such practice on a voluntary basis.

COMMENT 48: One commenter stated that "Special Provision IX provides that the leachate will be tested for Polychlorinated Biphenyls (PCBs) at least once a year through an appropriate method specified in 40 CFR Part 761. This provision needs to be strengthened because it is unclear what sampling methodology will be used to make it a representative sample." The commenter offered specific suggested permit language for consideration in development of the permit. (HCPHES)

RESPONSE 48: In response to HCPHES concerns, the applicant agreed to revise the application to address the sampling of landfill leachate for PCBs. Additionally, as a result of discussions between the applicant and HCPHES, the applicant has revised the application to address other issues raised by commenters. Such revisions include defining the terms "working face" and "active disposal area", and adding provisions to the draft permit to address the size and number of working faces, general management of odors at the site, additional odor abatements upon multiple odor violations, bird abatement, the number of random daily inspections, and the tracking of mud onto public roads.

COMMENT 49: One commenter stated that "The proposed permit states that minor amendments, modifications, and corrections, may be added to Part No. 3. We suggest specifying the rule citations that allow these actions." The commenter also stated that "[c]orrections, however, are not a mechanism authorized in the TCEQ rules (as applicable for MSW landfills)." (HCPHES)

RESPONSE 49: As indicated in 30 TAC Chapter 305, Subchapter D, corrections to municipal solid waste permits are a mechanism authorized in the TCEQ rules. Corrections are processed in accordance with 30 TAC Section 50.145.

COMMENT 50: One commenter stated that "there are provisions in the proposed permit and the SOP that would be difficult to enforce because the provisions are vague, and these provisions need to be clear." The commenter offered specific suggested permit language for consideration in development of the permit concerning bird activities, the tracking of mud, and load inspections. (HCPHES)

RESPONSE 50: The entire permit amendment application, including its subsequent revisions to address TCEQ Notice of Deficiency items, is referenced twice in the permit (Part No. 1, Section VII.A, and Part No. 2, Attachment A), and is therefore a part of the permit. The application addresses the tracking of mud and load inspections in detail in Sections 4.12 and 6 of Part IV of the permit amendment application. Response to Comment Numbers 5 and 36, above, provide more detail on these two issues. Concerning bird population issues, the McCarty Road Landfill facility is located well away from any public or private airports, and therefore does not present potential problems for area aircraft. The Federal Aviation Administration concluded in letters of April 17, 2003 and May 21, 2003 that the agency had no objection to the proposed permit amendment from the standpoint of potential bird hazards to aircraft, and that the proposed structure itself does not exceed obstruction standards and would not be a hazard to air navigation. Bird populations are also minimized by proper application and compaction of daily cover. Response To Comment Number 2, above, addresses this issue in regards to the control of vectors at the site. Finally, draft permit language pertaining to issues raised through this comment has been revised, as described below.

COMMENT 51: One commenter stated that McCarty Road has increased the size of the lagoon situated on the McCarty Road Landfill property, that the slope of the landfill is adequate, and that the landfill cover is adequate. (Grover G. Hankins)

RESPONSE 51: The Executive Director acknowledges these comments.

COMMENT 52: One commenter stated that the facility should recycle a greater variety of waste. (Joseph L. Pinzon)

RESPONSE 52: The TCEQ encourages source reduction, reuse, and recycling in many ways, such as the Texas Recycling Program and Urban Recycling Events held throughout the state. Additionally, TCEQ rules provide incentives for facilities to recycle, but recycling is discretionary and not a mandatory requirement for a landfill permit.

COMMENT 53: One commenter requested air monitoring in the community and soil sampling of roadways where standing water frequently collects. (Bernice Cranford)

RESPONSE 53: Air monitoring and soil sampling in the adjacent community is outside the scope of review for a MSW permit amendment. Individuals are encouraged to report any environmental concerns by contacting the Regional TCEQ Office, Region 12, at (713) 767-3500 or by calling the twenty-four hour toll-free Environmental Complaints Hotline at 1-888-777-3186. The TCEQ investigates all complaints received. Additionally, individuals may contact the Houston Health and Human Services Department Bureau of Air Quality Control at (713) 640-4200.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

In response to comments proffered by HCPHES as subsequent discussions between the applicant and HCPHES, certain changes to the draft permit have been made, as described below:

VII. Standard Permit Conditions

- F. The tracking of mud offsite onto any public right-of-way shall be minimized. (Original language in draft permit)

Tracking of mud and associated debris onto public roadways must be removed at least once per day on days when mud and associated debris are being tracked onto the public roadway. (Revised language in draft permit)

- H. The facility shall be properly supervised to assure that bird activities at the site will not increase and that appropriate control procedures will be followed. Any increase in bird activity that might be hazardous to safe aircraft operations will require prompt mitigation actions, *in accordance with the facility Bird Abatement Plan.* (Revised language in bold italics)

IX. Special Provisions

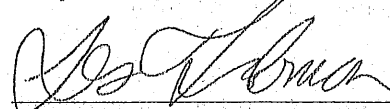
The permittee will conduct testing of landfill leachate for concentrations of Polychlorinated Biphenyls at least once a year, through an appropriate testing method pursuant to 40 CFR Part 761. The results of the testing shall be submitted to the executive director in report form within 60 days of the date that the testing took place. (Original language in draft permit)

The permittee will conduct sampling and testing of landfill leachate for concentrations of Polychlorinated Biphenyls (PCBs) every six months, using the wet weight method specified in 40 CFR Part 761. PCB concentrations shall be determined on a weight-per-weight basis. Discrete samples must be taken of leachate present at each sump. Dilution of the leachate is strictly prohibited. The results of the sampling and testing shall be submitted to the executive director using reporting methods specified in 40 CFR Part 761, within 60 days of the date that the sampling and testing took place. (Revised language in draft permit)

Should two or more notices of violation be issued to the permittee by a regulatory authority in a 12-month period, the permittee must initiate additional odor abatement measures in consultation with the TCEQ, Harris County, and the City of Houston. (Revised language in draft permit)

Additionally, several changes to the permit amendment application, which are incorporated into the draft permit, were made by the applicant through the submission of a revised SOP subsequent to the close of the comment period. Many of these changes relate to concerns raised by commenters, as discussed in detail above.

Respectfully submitted,



Les Trobman

Staff Attorney

Environmental Law Division

Bar No. 24039215

P.O. Box 13087, MC 173

Austin, Texas 78711-3087

(512) 239-6056 Telephone

(512) 239-0606 Facsimile

REPRESENTING THE

EXECUTIVE DIRECTOR OF THE

OF THE TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY